

AGENDA

Meeting: Southern Area Planning Committee
Place: Alamein Suite, City Hall, Malthouse Lane, Salisbury, SP2 7TU
Date: Thursday 19 September 2019
Time: 3.00 pm

Please direct any enquiries on this Agenda to Lisa Moore, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line (01722) 434560 or email lisa.moore@wiltshire.gov.uk

Press enquiries to Communications on direct lines (01225) 713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

Membership:

Cllr Fred Westmoreland (Chairman)	Cllr Leo Randall
Cllr Richard Britton (Vice-Chairman)	Cllr Sven Hocking
Cllr Brian Dalton	Cllr George Jeans
Cllr Christopher Devine	Cllr Ian McLennan
Cllr Jose Green	Cllr John Smale
Cllr Mike Hewitt	

Substitutes:

Cllr Trevor Carbin	Cllr Bridget Wayman
Cllr Ernie Clark	Cllr Graham Wright
Cllr Tony Deane	Cllr Robert Yuill
Cllr John Walsh	

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Public Participation

Please see the agenda list on following pages for details of deadlines for submission of questions and statements for this meeting.

For extended details on meeting procedure, submission and scope of questions and other matters, please consult [Part 4 of the council's constitution](#).

The full constitution can be found at [this link](#).

For assistance on these and other matters please contact the officer named above for details

AGENDA

Part I

Items to be considered when the meeting is open to the public

1 **Apologies**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 7 - 14*)

To approve and sign as a correct record the minutes of the meeting held on Thursday 30th May 2019, as attached to the agenda.

3 **Declarations of Interest**

To receive any declarations of disclosable interests or dispensations granted by the Standards Committee.

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation**

The Council welcomes contributions from members of the public.

Statements

Members of the public who wish to speak either in favour or against an application or any other item on this agenda are asked to register by phone, email or in person no later than 2.50pm on the day of the meeting.

The rules on public participation in respect of planning applications are detailed in the Council's Planning Code of Good Practice. The Chairman will allow up to 3 speakers in favour and up to 3 speakers against an application and up to 3 speakers on any other item on this agenda. Each speaker will be given up to 3 minutes and invited to speak immediately prior to the item being considered.

Members of the public will have had the opportunity to make representations on the planning applications and to contact and lobby their local member and any other members of the planning committee prior to the meeting. Lobbying once the debate has started at the meeting is not permitted, including the circulation of new information, written or photographic which have not been verified by planning officers.

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in particular, questions on non-determined planning applications.

Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on Thursday 12th September 2019, in order to be guaranteed of a written response. In order to receive a verbal response questions must be submitted no later than 5pm on Monday 16th September 2019. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

Details of any questions received will be circulated to Committee members prior to the meeting and made available at the meeting and on the Council's website.

6 **Mere Path No. 78 - Definitive Map and Statement Modification Order 2019**
(Pages 15 - 228)

To consider six objections and three representations of support to The Wiltshire Council Mere Path No.78 Definitive Map and Statement Modification Order 2019 made under Section 53 of the Wildlife and Countryside Act 1981.

Officer recommendation:

that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs (SoSEFRA) for determination with Wiltshire Council taking a neutral stance.

7 **Planning Appeals and Updates** (Pages 229 - 230)

To receive details of completed and pending appeals and other updates as appropriate for the period of 17th May 2019 to 6th September 2019, as detailed in the attached report.

8 **Planning Applications**

To consider and determine planning applications in the attached schedule.

8a **APPLICATION NUMBER: 19/05178/FUL - Rowdens Farm, Bunny Lane, Sherfield English, Romsey, Wiltshire SO516FT** (Pages 231 - 266)

Demolish black barn and rebuild using brick and cladding to create annexe within curtilage of Rowdens Farm house.

Urgent Items

Any other items of business which, in the opinion of the Chairman, should be taken as a matter of urgency

Part II

Items during whose consideration it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed

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SOUTHERN AREA PLANNING COMMITTEE

MINUTES OF THE SOUTHERN AREA PLANNING COMMITTEE MEETING HELD ON 30 MAY 2019 AT ALAMEIN SUITE, CITY HALL, MALHOUSE LANE, SALISBURY, SP2 7TU.

Present:

Cllr Fred Westmoreland (Chairman), Cllr Richard Britton (Vice-Chairman), Cllr Brian Dalton, Cllr Christopher Devine, Cllr Jose Green, Cllr Mike Hewitt, Cllr Leo Randall, Cllr Sven Hocking, Cllr George Jeans, Cllr Ian McLennan and Cllr John Smale

Also Present:

24 **Apologies**

There were none.

25 **Minutes of the Previous Meeting**

The minutes of the meeting held on 4th April 2019 were presented.

Resolved:

To approve as a correct record and sign the minutes.

26 **Declarations of Interest**

There were none.

27 **Chairman's Announcements**

The Chairman explained the meeting procedure to the members of the public.

28 **Public Participation**

The committee noted the rules on public participation.

29 **Planning Appeals and Updates**

The committee received details of the appeal decisions as detailed in the agenda.

Resolved:

To note the Appeals report for the period of 22/03/2019 to 17/05/2019.

30 **Planning Applications**

31 **19/02051/FUL - Land adjacent to Kiln Close, Whaddon, Alderbury, SP5 3HE**

Public Participation

Sarah Stephens spoke in objection to the application

Nigel Lilley (Agent) spoke in support of the application

Elaine Hartford spoke on behalf of Alderbury Parish Council (PC)

The Senior Planning Officer, Warren Simmonds presented the application which was for a new dwelling with integral garage and access. The application was recommended for approval with conditions, as set out in the report.

Attention was drawn to the late correspondence which was circulated at the meeting which included three letters from third parties (C Webber, R Hall & L Wood) each objecting to the proposed development on grounds including obstruction of access to the embankment for maintenance, unacceptable development and instability to existing mature trees.

This application was a resubmission of a previously refused scheme earlier this year. The current scheme was amended by a reduction in the proposed reduced footprint of the dwelling.

The site was part of a former piece of railway land. Photos were shown from the top of the embankment looking out in all directions.

The eastern projection has been significantly reduced, the height of the house was the same, however the bank had been found to be higher than previously detailed.

A section from Kiln Close showing the embanked behind the proposed development was shown on a slide.

Members had the opportunity to ask technical questions of the Officer, where it was clarified that the report still referred to an integral garage, this was confirmed as an error, there was no garage proposed, as off street parking was now proposed.

Members of the public then had the opportunity to present their views as detailed above.

The local resident noted that the existing dwellings were all of a larger scale with either 4 or 5 bedrooms. She felt that the architecture of the proposed development did not match what was already there.

It was noted that the close of dwellings was tucked away from the rest of the village and residents had a sense of privacy, and felt that would be altered if the proposed dwelling went ahead.

Other concerns focused on drainage issues and what may become of the remaining land at a later date.

The Agent drew attention to the Planning statement that had been submitted with the application, as it had addressed some of the comments made by the Committee on the last occasion.

The red line area was designed so that it did not extend north or west, so there was no residential use on top of the bank, but it did extend south for parking.

The property would be 70m back from the highway and would be the second house from the entrance, so would not act as a gatehouse.

The retaining wall would not appear as a dominant feature.

Elaine Hartford, Chairman of Alderbury PC spoke in objection to the revised application., with reasons which were largely the same as they had been for the previous application.

The current scheme amendments did not alter the fact that the parish council felt it was totally out of keeping with neighbouring properties and the plot was too narrow from east to west, and would overlook the neighbouring properties.

There were also concerns relating to drainage, heavy plant vehicles using the private road which was deemed not suitable and the change of use of the railway bank which was part of the history of the area and was considered an attractive outlook.

It was noted that many trees had been cleared some time ago, before the ecological survey had been carried out and this it was suggested would weaken the bank.

The Division Member Cllr Richard Britton then spoke in objection to the application, noting that he welcomed the changes that had been made, and that he felt it had been a genuine attempt to meet the issues of the committee. However, he added that in his opinion they did not address all of the issues.

Kiln Close was characterised by decent sized houses in good sized plots and snakes around to the left. All existing houses sat in their own plots. The idea to dig in to the embankment was out keeping with the rest of the development.

The remaining wall along the back of the property would be an alien feature in this plot. The development would have an adverse impact on the streetscene itself.

The front elevation had been set back from the edge of the road, however with the removal of the embankment it would be a prominent feature in the Close and would be seen from the properties on the Southampton Road.

There would be an adverse ecological impact, it was a cramped development, as it was long and thin on a long thin plot.

Cllr Britton then moved the motion of refusal against Officer recommendation. This was seconded by Cllr Devine.

A debate followed where the key points raised included that the entrance to the close was set out with houses on the right and the vegetation on the left. This proposal would change that layout.

There was always some associated disruption during development, with plant movement and deliveries, but that would be short lived.

There was a shortage of new 3 bed houses.

The applicant had made efforts to address the previous reasons for concern.

It may be appropriate here to have the permitted development rights removed so that any future paraphernalia would have to come through a planning application process.

The Ecological report had not put any major restrictions in place.

A condition could be included so that the height of the bank be maintained.

There were no objections from the statutory consultees now that some of the development had been reduced. There were no planning reasons to prevent the development going ahead.

The Committee then voted on the motion of refusal. The motion was not carried.

Cllr Hewitt then moved the motion for approval with permitted development rights removed and conditions regarding the retained height of the embankment and a construction management plan.

This was seconded by Councillor Dalton.

The Committee then voted on the motion of approval with the additional conditions as stated above.

Resolved:

That application 19/02051/FUL be Approved with the following conditions.

1.The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2.The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing number Cw/p/14A dated Feb'19, as deposited with the local planning authority on 12.04.19, and

Drawing number Cw/pa/10A dated Feb'19, as deposited with the local planning authority on 12.04.19.

REASON: For the avoidance of doubt and in the interests of proper planning.

3.No construction or demolition work shall take place on Sundays or Public Holidays or outside the hours of 08:00 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays.

Reason: In the interests of amenity

4.No burning of waste or other materials shall take place on the development site during the demolition/construction phase of the development.

Reason: In the interests of amenity

5.No development shall commence on site until a scheme for the discharge of foul water from the site has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until foul water drainage has been constructed in accordance with the approved scheme.

REASON: To ensure that the development can be adequately drained

6.No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access / driveway), incorporating sustainable drainage details together with permeability test results to BRE365 at the location of any proposed soakaways, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

REASON: To ensure that the development can be adequately drained

7.No part of the development hereby approved shall be first occupied until the parking area shown on the approved plans has been consolidated, surfaced and laid out in accordance with the approved details. This area shall be maintained and remain available for this use at all times thereafter.

REASON: To ensure that adequate provision is made for parking within the site in the interests of highway safety.

8.The development hereby approved shall be carried out in strict accordance with the recommendations made in the submitted Ecological Constraints Survey Report (Daniel Ahern, Dec 2018). Any permitted external lighting should be minimised as per the recommendations in the submitted Ecological Constraints Survey Report.

Reason: To ensure adequate mitigation in respect of protected species and to retain existing dark wildlife corridors.

9.Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England)Order 2015 (or any Order revoking or re-enacting or amending those Orders with or without modification), no development within Part 1, Classes A-E shall take place on the dwellinghouse hereby permitted or within the curtilage.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions, extensions or enlargements.

10.No development shall commence above ground level until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The CMP shall include, but not necessarily be limited to, the following:

a) Risk assessment of potentially damaging construction activities

c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (to include access to, and movements within the site for construction vehicles and construction related traffic).

h) Use of protective fences, exclusion barriers and warning signs.

The approved CMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

REASON: In the interests of amenity and Highway safety.

11.Other than as expressly described by the approved drawings (Condition 2), the existing level(s) and form of the embankment shall not be altered.

Reason: In the interests of amenity

32 **19/02848/FUL - The Glebe, Homington Road, Coombe Bissett, SP5 4LR - WITHDRAWN**

This application had been withdrawn, and was not considered by the Committee on this occasion.

33 **Urgent Items**

There were no urgent items.

The Committee noted the following requests for future site visits:

- Land at Wagtails, Alderbury – Development of 36 dwellings.
- 115 Tollgate Road

Cllr Devine expressed concern about the wellbeing of the two people occupying a property in East Grimstead which did not have planning approval. The two occupants were both reported as having serious medical issues. He asked whether they had been visited by Social Services.

Cllr Britton- in whose division this property is situated – stated that the Council's legal department had been in touch with the couple from time to time over the past few years reminding them that the property was being illegally occupied but recognising the mitigating factor of their health.

Cllr Britton undertook to obtain an update.

The Committee also noted that at the last meeting part of the decision for application 18/03678/FUL was that the bank be reinstated. An update on the progress of that was requested for the next meeting.

(Duration of meeting: 3.00 - 4.00 pm)

The Officer who has produced these minutes is Lisa Moore of Democratic Services, direct line (01722) 434560, e-mail lisa.moore@wiltshire.gov.uk

Press enquiries to Communications, direct line (01225) 713114/713115

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**WILTSHIRE COUNCIL
SOUTHERN AREA PLANNING COMMITTEE**

19 SEPTEMBER 2019

WILDLIFE AND COUNTRYSIDE ACT 1981

**THE WILTSHIRE COUNCIL MERE PATH NO. 78
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2019**

Purpose of Report

1. To:
 - (i) Consider six objections and three representations of support to The Wiltshire Council Mere Path No.78 Definitive Map and Statement Modification Order 2019 made under Section 53 of the Wildlife and Countryside Act 1981.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs (**SoSEFRA**) for determination with Wiltshire Council taking a neutral stance.

Relevance to the Council's Business Plan

2. Working with the local community to provide a rights of way network which is fit for purpose, making Wiltshire an even better place to live, work and visit.

Background

3. On 24 April 2018 Wiltshire Council received an application from Mr Sams of Mere for an Order to record a public footpath over land north of The Square, Mere in the parish of Mere. The claimed route leads from The Square, Mere north through an archway and across a private car park to North Street, Mere, having a length of approximately 57 metres (please see order route at section 4 of the Decision Report at **Appendix 1**).
4. The application adduced evidence from 23 people who completed User Evidence Forms (UEFs) detailing their use on foot of the application route in full for varying lengths of time dating from the 1940s to 2017. A further two UEFs were submitted at a later date and not in time to be considered for the Decision Report, taking the total to 25 people who submitted forms. It is noted that 26 forms were submitted in total, with the lead applicant, Mr Sams, submitting two forms at different dates. The UEFs are discussed in detail at section 12 of the Decision Report (**Appendix 1**) and Mr Sams' two forms are discussed at 14.13 of the Decision Report (**Appendix 1**).

5. For public rights to have been acquired under statute law (see **Appendix 1** section 9.5 – Highways Act 1980 Section 31) it is necessary for the use of the way to have been uninterrupted for a period of at least 20 years in a manner that is 'as of right', that is, without force, without secrecy and without permission. This would give rise to a 'presumption of dedication'.
6. A presumption of dedication may be defeated in a number of ways, including the erection and maintenance of signage indicating that there is no intention to dedicate public rights, effective challenges to use, the closure of the claimed route (for example a closure for one day every year may be effective depending on the circumstances), the granting of permission or by depositing a number of documents with the Council as prescribed by Section 31(5) and (6) of the Highways Act 1980 (see **Appendix 1** section 9.5).
7. Wiltshire Council has a duty to consider all relevant available evidence and officers conducted an initial six week consultation on the application, commencing in June 2018. The consultation letter was sent to all interested parties, including landowners, Mere Town Council, user groups, the local member and other interested individuals. As a result of this initial consultation it came to light that a number of adjoining properties had not been included in the initial consultation and, as such, further letters of consultation were sent to all known surrounding addresses.
8. All of the evidence and responses to the consultation were duly considered in the Council's Decision Report appended here at **Appendix 1(A)**. Applying the legal test contained within Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 and Section 31 of the Highways Act 1980 (see **Appendix 1** paragraph 9.1 through to 9.5), the application formed a reasonable allegation (see Section 31 of the Decision Report at **Appendix 1**) that a public right subsisted. An Order was made to record the path as a footpath in the definitive map and statement.
9. The Order was duly advertised and attracted six objections and three representations of support. A copy of the Order is appended here at **Appendix 2**.
10. Where objections are received to a Definitive Map Modification Order Wiltshire Council may neither confirm nor abandon the Order and must forward it to SoSEFRA for determination. However, it must first consider the representations and objections to the Order and make a recommendation to SoSEFRA regarding the determination of the Order.
11. It is important that only the evidence adduced or discovered is considered and matters relating to desirability, the environment, need, privacy concerns or health and safety are irrelevant for the application of Section 53 of the Wildlife and Countryside Act 1981.

Main Considerations for the Council

12. Section 53(2) of the Wildlife and Countryside Act 1981 places a duty upon the Surveying Authority to keep the definitive map and statement of public rights of way under continuous review.

13. The Order is made under Section 53(3)(c) of the Wildlife and Countryside Act 1981, based on:
- “the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows-*
- (i) that a right of way which is not shown in the definitive map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or subject to section 54A, a byway open to all traffic.”*
14. Under Section 31(1) of the Highways Act 1980 *“where a way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”*
15. Evidence is the key and therefore objections to the making of the Order must, to be valid, challenge the evidence available to the Surveying Authority. The Authority is not able to take into account other considerations, such as the suitability of the way for use by the public, the proximity of any other paths or facilities, environmental impacts and any need or desire for the claimed route.
16. **Objections to the Order:**
- (1) Mr Andrew Lipscombe on behalf of Lipscombe Building Contractors (landowner)
 - (2) Ms Saffron Reilly-Stitt on behalf of The Walton Building Management Company (landowner)
 - (3) Mr James Dyke
 - (4) Mr Andrew Holder
 - (5) Ms Gillian Main
 - (6) Mr Alan Morris (Welcome House Residents Association)

Representations of Support

- (1) Ms Diane Pringle
- (2) Mere Town Council
- (3) Mr Hamish Bell

These objections and representations can be seen in full at **Appendix 3**.

Comments on the Objections and Representations

Mr Andrew Lipscombe

17. Mr Lipscombe submitted a body of evidence in objection to the Order which includes photographs of the route and documentary evidence. The photographs provided by Mr Lipscombe, labelled “P1-P12” and seen at **Appendix 3**, demonstrate at various times that the route has been blocked by barriers, wooden braced gates and show a padlock and chain in situ on the metal gates from The Square, Mere. The photographs are dated from 2007, 2008, 2009 and 2011.

18. This additional physical evidence shows the route clearly being blocked and unavailable for public use on various dates from 2007-2011. The earliest photographs (P3-P6 - see **Appendix 3**) demonstrate in 2007 when Mr Finan (the previous landowner) sold the land to Mr Lipscombe, the metal gates, although open in the photograph as they were in use to look at the land, did have a chain and padlock. It would be reasonable to surmise the chain and padlock were in use and were barring use of the gateway. We cannot be sure what period of time this padlock was in use but this photograph is significant as it is evidence that the padlock, the existence of which was disputed by supporters and objectors, did exist and was, as evidenced by the photograph, on the gate in 2007. This photograph supports Mr Finan's claim that he padlocked the gate for the majority of the time he owned the land and controlled the gate from 2004-2007.
19. Further photographs, P1, P2, P7, P10, P11 and P12 demonstrate the route was blocked by barriers or braced large wooden gates on various dates in 2007, 2008, 2009 and 2011. The issue of the gates being locked, braced or padlocked, or in the case of the wooden gates being in existence at all, were a main point of contention for the case. It is significant that the bracing of the wooden gates would have locked the gate to users from one direction and made it difficult to use if approaching from the other. Until Mr Lipscombe's evidence submitted in objection to the Order the only evidence for the case of the gates being locked or braced were in the form of one photograph and verbal or written testimony, of which there is also similar evidence denying this. These photographs demonstrate the route was clearly blocked on at least six different occasions covering the years 2007, 2008, 2009, and 2011. It demonstrates a consistent body of evidence that during the period 2007-2011 the route was regularly blocked.
20. The other photographs submitted show cars and wheelie bins restricting the use of the way, although not totally blocking the route, and photographs documenting the change and improvement in the surface of the path pre and post redevelopment work. The path pre redevelopment would not have been as attractive or easy to use for any potential users but could have been used, if the gates were not braced or locked or a barrier in place.
21. The documentary evidence submitted by Mr Lipscombe, "D1-D4", shows a plan from the year 2000 which indicates there were two sets of gates or doors on the route of the path, which is further supporting evidence the wooden gates (now removed) were in existence. Document "D2" is the initial consultation response from Mere Town Council in which Mr Lipscombe highlights some comments made and disputes these comments in his letter of objection. The content of Cllr Jeans' statement to the Town Council is not available in full and the various statements and evidence submitted in support and objection to the application have been considered in the Decision Report at **Appendix 1**. "D3" documents the work carried out by Lipscombe Builders and document "D4" shows "private" signs were purchased with the invoice dating to 2017. This document shows that a laminated aluminium sign stating private was purchased. Mr Lipscombe states this sign, and others previously, was placed on the gates and fencing but unfortunately no photographs are available to demonstrate this.

22. In summary, the objection letter and attached evidence from Mr Lipscombe has assisted officers by providing additional weight of evidence that the wooden gates were beyond reasonable doubt in situ and braced on at least the occasions documented. If a user of the way was approaching from North Street the braced gates would form a barrier that would not be in the normal character of a public footpath and if opened the user could not have re-braced the gates once going through. The gates would not have been openable if approaching the route from The Square. The archway and claimed route were blocked by barriers or gates, at least on the dates of the photographs, and it would seem reasonable to assume on other days photographs were not taken, although we cannot be certain of this. The photographs showing the padlock and chain in place in 2007 support the claims the route was padlocked at various times, although we do not know the extent of the locking, the photograph shows the padlock did exist and the claims from Mr Finan and others that the gate was padlocked at various times gain credibility with this evidence.

Objection from Ms Reilly-Stitt

23. Ms Reilly-Stitt objected on behalf of The Walton Building Management Company who is one of the landowners affected. The content of the objection refers to the potential noise, disturbance and loss of privacy to the residents and the potential additional wear and tear to the paving of the car park.
24. Whilst these concerns are understandable, and can be sympathised with, these points cannot be considered as part of this case, only the evidence and tests as set out in Section 31 of the Highways Act can be taken into account.

Objection from Mr Dyke

25. Mr Dyke objects on the grounds the land is private, the potential decrease in value of the properties and the availability of alternatives. These points cannot be considered in this case, only the relevant legal tests can be considered.
26. Mr Dyke also states the route has only been used by the residents and during the building work the route was blocked and no complaints were made. The use of the path and locking of the gates has been discussed in the Decision Report and in this report and form the body of evidence that has been evaluated.

Objection from Mr Holder

27. Mr Holder has objected at the initial consultation phase and now at the order making stage and has provided a photograph dating to 2007 showing the route blocked by the wooden gates. Mr Holder states he erected private signs which were removed and that during the building works the gates were usually locked and therefore for a period of five years the route was usually not available.
28. These points have been discussed in the Decision Report as part of the evidence and case to date.

Objection from Ms Gillian Main

29. Ms Main's objection refers to her previous communication which can be seen at **Appendix 1(A)**. In these communications Ms Main objects to the Order on the grounds there are alternatives to the route, that use of the path leads to litter and other unsociable behaviour on the route and the locking of the route has led to those activities ceasing. She also states knowledge of the locking of the gates pre 2000 and by Mr Finan after this period and that signs were erected in 2012 stating private property, but these went missing. She also makes statements regarding the Town Council meeting in which they voted to support the proposal at the initial consultation.
30. The matters of unsociable behaviour, litter and alternative routes can be sympathised with; however, these issues cannot be considered as per the relevant legislation. The issue of the locked gates has been discussed in the Decision Report as has the issue of the signs. The Town Council has supported the Order and any vote it undertook at any stage is a matter for the Town Council, its representation of support is discussed below at paragraph 34 of this report.

Objection from Mr Morris

31. Mr Morris represents the Welcome House Residents Association and refers to his initial objection to the proposal. In this he objects on health and safety concerns and anti-sociable behaviour. These points are not able to be considered as per the relevant legislation to this Order. Mr Morris also raised the point of the wooden gates being locked and Mr Finan locking the gates. These points have been investigated and considered as per the Decision Report to this case.

Representation of Support from Ms Pringle

32. Ms Pringle wrote in support of the Order and states she has used the route regularly since 1985 until recently and was never stopped or challenged. She does state it was padlocked rarely on Christmas Day but not for at least 20 years and that Manor Road is dangerous to use as an alternative.
33. Ms Pringle can be considered a user of the path that we were unaware of previously, the details of her use (frequency and nature) have not been investigated although she states she only saw a padlock on Christmas Day but not for at least 20 years and she used the path regularly. She does not mention the large wooden gates or any other blockage of the route, of which we have photographic evidence as per Mr Lipscombe's objection. Ms Pringle's regularity and nature of use could be investigated at a future public inquiry.

Representation of Support from Mere Town Council

34. Mere Town Council supported the Order as per its letter and meeting held on 13 May. The reasons for support appear to be that the order route is a safer alternative than Manor Road for pedestrians.

35. The desirability of the order route, or the safety of alternative routes, are not points that can be considered as part of this case. Only the evidence and relevant legislation can be considered.

Representation of Support from Mr Hamish Bell

36. Mr Bell refers to the safety issues of using Manor Road as an alternative to the order route. This is not a valid consideration for the determination of this Order, only the evidence can be considered.
37. It has come to the attention of officers that some evidence was omitted from the Decision Report. Prior to submission of the application in the correct format, as set out in the regulations, officers received communication from Mr Sams, the applicant, and Cllr George Jeans regarding the obstruction of the order route. As part of this communication a number of statements from local residents were submitted documenting their concern of the blocking of the order route. Officers responded to Cllr Jeans and Mr Sams advising these statements did not contain the relevant information for the Council to evaluate the use of the route and make a judgement on the rights that may subsist on the route and it was recommended the UEFs were filled out to assist any application made. These initial statements submitted can be seen at **Appendix 5**. A number of the residents who filled out statements did at a later date fill out UEFs but not all of them did so; however, they were all contacted during the consultation phase and any responses were considered in the Decision Report.
38. The Council cannot just take into account the number of objections but must consider the evidence contained within those objections against the evidence contained within the representations of support and the evidence already before the Council, as outlined within the Decision Report attached at **Appendix 1**. There will inevitably be points of conflict within the evidence of objectors and that of the supporters of an Order and this is the case for this Order. For this reason, and the lack of incontrovertible evidence received at the pre order stage, the Order has been made on a reasonable allegation that a right of way for the public on foot subsists, which is a lower test than the balance of probabilities (see **Appendix 1** - paragraph 30.2).
39. The case of *R v Secretary of State for the Environment, ex p. Bagshaw and Norton*, Queen's Bench Division (Owen J.): April 28, 1994, deals with the applications of both Mrs Norton and Mr Bagshaw, who had applied to their respective county councils for Orders to add public rights of way to the definitive map and statements, based upon witness evidence of at least 20 years uninterrupted public user and where the councils determined not to make Orders. On appeal, in both cases, the Secretary of State considered that the councils should not be directed to make the Orders. At judicial review, Owen J allowed both applications; quashed the Secretary of State's decisions and held that:

“(1) under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, the tests which the county council and the then Secretary of State needed to apply were whether the evidence produced by the claimant, together with all the other evidence available, showed that either (a) a right of way subsisted or (b) that it was reasonable to allege that a right of way subsisted. On test (a) it would be

necessary to show that the right of way did subsist on the balance of probabilities. On test (b) it would be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege a right of way to subsist. Neither the claimant nor the court were to be the judge of that and the decision of the Secretary of State was final if he had asked himself the right question, subject to an allegation of Wednesbury unreasonableness. The evidence necessary to establish that a right of way is reasonably alleged to subsist is less than that needed to show that a right of way does subsist. The Secretary of State had erred in law in both cases as he could not show that test (b) had been satisfied.”

40. Owen J also held that:

“(2) In a case where the evidence from witnesses as to user is conflicting, if the right would be shown to exist by reasonably accepting one side and reasonably rejecting the other on paper, it would be reasonable to allege that such a right subsisted. The reasonableness of that rejection may be confirmed or destroyed by seeing the witnesses at the inquiry.”

41. It is notable in the Norton case that, the Secretary of State “...notes that the user evidence submitted in support of a presumption of dedication is limited to four persons claiming 20 years of vehicular use as of right; he must weigh this against the statements from the landowner, supported by 115 signed forms and the Layham and Polstead Parish Councils, indicating the use of the route has been on a permissive basis and that active steps to prevent a presumption of dedication arising have been taken...”. In both the Norton and Bagshaw cases Owen J concluded that:

“If, however, as probably was so in each of these cases, there were to be conflicting evidence which could only be tested or evaluated by cross-examination, an order would seem likely to be appropriate.”

42. Even in a case with only limited supporting evidence and a large number of objections, Owen J held that an Order would seem appropriate. When this case law is applied to this case, where there were 26 completed UEFs, and no incontrovertible evidence in objection, it suggests that the making of a definitive map modification order was appropriate.

43. In such a case where the balancing test is to be applied to the evidence, the authority was correct in making the Order on the grounds that it is reasonable to allege that a right of way for the public on foot subsists.

44. The objectors, and in particular Mr Lipscombe, have now submitted a significant body of additional evidence which must be considered. The photographic evidence has confirmed beyond reasonable doubt that the wooden gates were in existence and closed or braced at various points in time. The photograph of the padlock and chain has provided additional evidence in favour of the gate being padlocked at some time in 2007 and indicates it may have been padlocked prior to this time which is claimed by Mr Finan and one of the previous landowners to him, Mr Squires, dating back to the 1990s and potentially earlier. It is noted these photographs do only provide direct evidence the gate had a padlock in 2007 and the route was blocked at various times during the construction period

after 2007 until 2011. It is deemed likely the padlocking of the gate and obstructions documented would have caused an interruption to public use if somebody wished to use the route during this period. Being in a prominent position in the centre of Mere it would seem unlikely the users of the way, who claim on the whole to have used the route on a regular basis during this period, would have been unaware of these obstructions and the building work going on.

45. Accepting this evidence it is considered the point of calling into question of the route could now be set at the year 2007, as we have evidence the route was padlocked and blocked at various dates from the year 2007 onwards which would have challenged or interrupted the use of the public and communicated to a reasonable user of the way that there was no intention to dedicate this route as a public right of way. Therefore, the potential 20 year user period for claiming a right under Section 31 of the Highways Act 1980 could be seen as 1987-2007. This 20 year period from 1987-2007 does have user evidence as documented in the Decision Report - see **Appendix 1** section 12.2 and **Appendix 4** to this report documenting individual use claimed in UEFs submitted. Some users during this period are claiming use of the path on a daily basis and none encountered a blockage or any locked or braced gates during their period of use. It is noted a number of those users claiming use between 1987 and 2007 also claim use after 2007, some on a daily basis, and have stated they did not encounter a locked gate or blockage to the route.
46. There is clearly still a conflict of evidence which needs to be resolved. The evidence given in objection has clarified some points and assisted in the evidence analysis, particularly after 2007, and also adds some weight to the likely pre 2007 conditions of the route. A number of users maintain their use pre 2007 and this use encompasses a period of 20+ years of use of the route on a regular basis uninterrupted. This is in conflict with verbal and written evidence given to the locking of gates on the route dating back to at least the early 1990s and possibly earlier. The evidence given by some users appears to be inconsistent with the new evidence provided by the objectors and it is deemed on the balance of probabilities a right did not subsist from 2007 onwards as the public use of the route is likely to have been interrupted, as shown by the evidence at this time. The use pre 2007 for a period of 20 years, 1987-2007, is still disputed by the given evidence. The additional evidence adds credibility to the claims of a padlock and braced gates in previous years dating back to the 1990s and earlier and if these earlier interruptions were deemed by an inspector at a public inquiry to have brought the way into question it may move the relevant 20 year period to be considered further back in time which would decrease the number of users and as discussed in the Decision Report potentially to a time when it is claimed the nature of the route was so different to today that using it would have been impossible. The only way to properly determine the Order is to see the witnesses at a public inquiry where they may give evidence in chief and their evidence may be tested through the process of cross-examination to establish whether, on the balance of probabilities, the public right has been acquired.

Overview and Scrutiny Engagement

47. Overview and Scrutiny Engagement is not required in this case. The Council must follow the statutory process which is set out under Section 53 of the Wildlife and Countryside Act 1981.

Safeguarding Considerations

48. Considerations relating to safeguarding anyone affected by the making of the Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

Public Health Implications

49. Any public health implications arising from the making of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

Corporate Procurement Implications

50. In the event this Order is forwarded to SoSEFRA there are a number of opportunities for expenditure that may occur and these are covered in paragraphs 54 to 56 of this report.

Environmental and Climate Change Impact of the Proposal

51. Any environmental or climate change considerations arising from the making of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

Equalities Impact of the Proposal

52. Matters relating to the equalities impact of the proposal are not relevant considerations in Section 53 of the Wildlife and Countryside Act 1981.

Risk Assessment

53. Wiltshire Council has a duty to keep the definitive map and statement of public rights of way under continuous review and therefore there is no risk associated with the Council pursuing this duty correctly. Evidence has been brought to the Council's attention that there is an error in the definitive map and statement of public rights of way which ought to be investigated and it would be unreasonable for the Council not to seek to address this fact. If the Council fails to pursue its duty it is liable to complaints being submitted through the Council's complaints procedure, potentially leading to complaints to the Ombudsman. Ultimately, a request for judicial review could be made with significant costs against the Council where it is found to have acted unlawfully.

Financial Implications

54. The making and determination of Orders under the Wildlife and Countryside Act 1981 is a statutory duty for Wiltshire Council for which financial provision has been made.
55. Where there are outstanding objections to the making of the Order it must be determined by the Secretary of State. The outcome of the Order will then be determined by written representations, local hearing or local public inquiry, all of which have a financial implication for the Council. If the case is determined by written representations the cost to the Council is £200 to £300; however, where a local hearing is held the costs to the Council are estimated at £300 to £500. A one day public inquiry could cost between £1,500 and £3,000 if Wiltshire Council continues to support the making of the Order (i.e. where legal representation is required by the Council) and around £300 to £500 where Wiltshire Council no longer supports the making of the Order (i.e. where no legal representation is required by the Council and the case is presented by the applicant).
56. Where the Council objects to the Order, the Order must still be forwarded to the SoSEFRA for determination. As in the case of a supported Order, the possible processes and costs range from £200 to £3,000 as detailed at paragraph 55 above.

Legal Implications

57. Where the Council does not support the Order, clear reasons for this must be given and must relate to the evidence available. The applicant or another third party may seek to challenge the Council's decision by way of judicial review if it is perceived by the applicant or third party that the decision is legally incorrect. The Council could incur potential legal costs in defending any legal challenge of up to £50,000.

Options Considered

58. Members should now consider the objections received and the evidence as a whole in order to determine whether or not Wiltshire Council continues to support the making of the Order. The making of the Order has been objected to, therefore the Order must now be submitted to SoSEFRA for determination and members of the committee may determine the recommendation (which should be based upon the evidence) to be attached to the Order when it is forwarded to the SoSEFRA as follows:
 - (i) The Order be confirmed without modification.
 - (ii) The Order be confirmed with modification.
 - (iii) The Order should not be confirmed.
 - (iiii) The Order should be determined by SoSEFRA with Wiltshire Council taking a neutral stance.

Reason for Proposal

59. Unless the objections and representations are withdrawn the Order must be forwarded to SoSEFRA for determination.
60. Whilst an Order can be made on the basis of a reasonable allegation of rights subsisting, in relation to confirmation of an Order at this stage, the decision in *Todd and Bradely V the Secretary of State for Environment, Food and Rural Affairs* (2004) means that only one test is to be applied. That is whether, on the balance of probabilities, a right of way which is not shown on the Definitive Map or Statement subsists. By reference to *Todd and Bradley*, this is the ordinary civil burden of proof, meaning that “it is more probable than not on the evidence and on all the evidence that a right of way exists”. This is the test that SoSEFRA will apply and which this Council should consider.
61. It is considered that the additional evidence submitted as part of the objectors’ submissions demonstrates sufficiently that there was no intention to dedicate a public right of way from 2007 onwards and any use would have been interrupted sufficiently by the padlocking or blocking of the route as shown by the photographs and the implication being this would have occurred on a regular basis, particularly from 2007 onwards.
62. The use of the route pre 2007 is disputed. The given evidence in objection demonstrates the route was padlocked or blocked by gates at various times pre 2007 and the user evidence given demonstrates that the way was used without interruption on a regular basis during the period 1987-2007 and earlier. The additional evidence contained within the objections to the Order casts doubt on the claims of the users who claimed use on a regular, at times daily, basis from the 1960s to present day, which appears to be unlikely from the additional evidence given, certainly from 2007 onwards.
63. The reasonable implication is that the use pre 2007 may have also been interrupted, with Mr Finan claiming to have locked the gates from 2004-2007 and Mrs Young and Mr Squires giving evidence they locked the gates, or were aware of locked gates, indeed the lead applicant remembers the gates being locked by Mr Squires in the early 1990s. The circumstances of the gates and use of the path pre 2007 is unclear at best and there are inconsistencies in the evidence in support. However, a number of users still claim use pre 2007 for a period of 20 years in a manner that is as of right and would meet the tests of Section 31 of the Highways Act 1980.
64. Where there is conflicting evidence it may be tested, along with all other evidence, at a public inquiry. In *R v Secretary of State for the Environment ex p. Bagshaw and Norton* [1994] 68 P&CR 402 Owen J “*In a case where the evidence of witnesses as to user is conflicting, if the right would be shown to exist by reasonably accepting one side and reasonably rejecting the other on paper, it would be reasonable to allege that such a right subsisted. The reasonableness of that rejection may be confirmed or destroyed by seeing the witnesses at the inquiry.*”

65. In making this Order officers considered that a reasonable allegation as to the acquisition of public rights over the Order Route had been made. It is considered that given the further evidence that has been adduced since making the Order, that sufficient doubt has been cast by that evidence as to bring into question the credibility of evidence in support of the Order and, as such, Wiltshire Council should not continue to support the Order but should facilitate a public inquiry or hearing. The testing of witnesses will be key to the final decision but due to the lack of clarity and inconsistencies in the evidence the Council stays neutral in this case and allows the objectors and supporters to represent themselves at a future public inquiry or hearing. The holding of a public inquiry or hearing will facilitate an inspector appointed by SoSEFRA to determine the Order with the benefit of the evidence being cross-examined by either side if an inquiry is held.

Proposal

66. That “The Wiltshire Council Mere Path No.78 Definitive Map and Statement Modification Order 2019” should be determined by SoSEFRA with Wiltshire Council taking a neutral stance.

David Redfern

Acting Director – Communities and Neighbourhood Services

Report Author:

Craig Harlow

Definitive Map Officer

The following unpublished documents have been relied on in the preparation of this Report:

User Evidence Forms

(The above-mentioned documents are available to be viewed at the offices of Rights of Way and Countryside, Wiltshire Council, County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN.)

Appendices:

- Appendix 1 - Decision Report- including Appendices 1[A], 1[B], 1[C] to the Decision Report
- Appendix 2 - “The Wiltshire Council Mere Path No. 78 Definitive Map and Statement Modification Order 2019”
- Appendix 3 - Objections and representations of support to the Order
- Appendix 4 - User Evidence Analysis
- Appendix 5 - Statements filled out prior to application - omitted from initial report

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DECISION REPORT
WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53
APPLICATION TO ADD A FOOTPATH TO THE DEFINITIVE MAP AND STATEMENT OF
PUBLIC RIGHTS OF WAY - MERE - THE SQUARE TO NORTH STREET

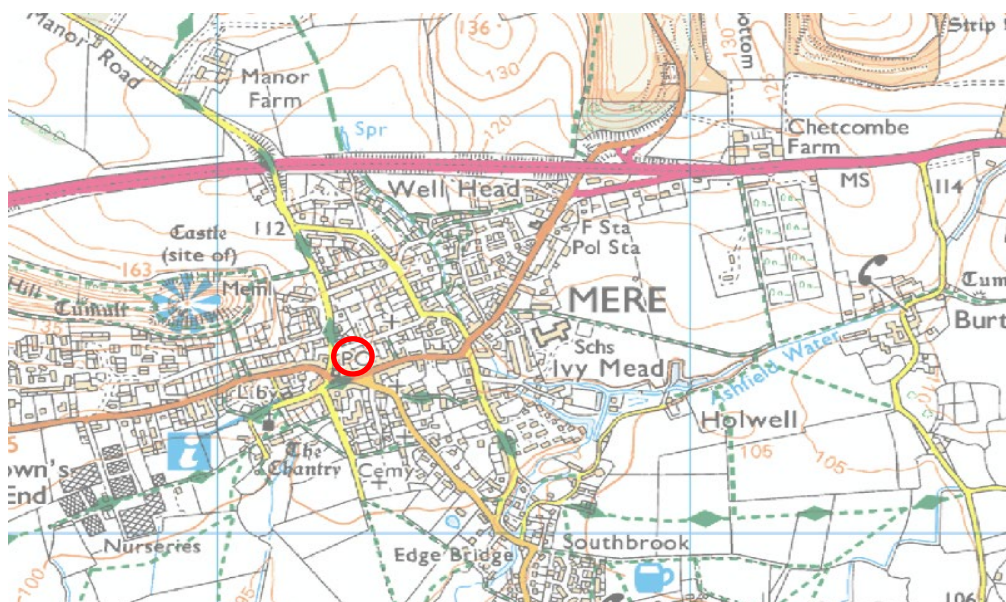
1. Purpose of Report

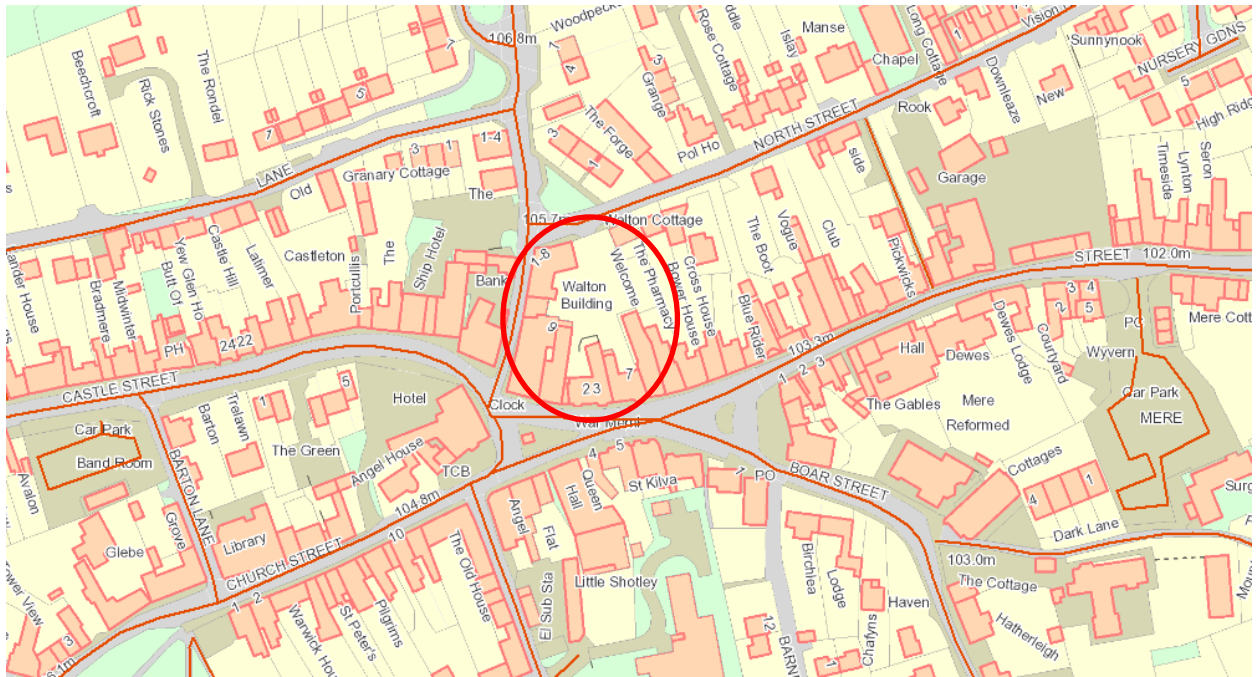
- 1.1. To determine an application, made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way, in the parish of Mere. The claimed route leads from The Square, Mere in a northerly direction from the public footway through an archway to and across a private car park to North Street, Mere.

2. Relevance to Council's Business Plan

- 2.1. Working with the local community to provide a rights of way network fit for purpose, making Wiltshire an even better place to live, work and visit

3. Location





3.1. 2014 Aerial Photos of area.



- 4.1. The application is made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way in the parish of Mere leading from point A, at its junction with North Street, Mere leading south through a private car park and through an archway and metal gates to The Square, Mere. The route A to B is approximately 57 metres in length.

5. Photographs

Photos taken on 12th June 2018 of the claimed route.

In the below photos the red arrow on the aerial photo shows the position and direction of the photo on the left.

5.1.



5.2.



5.3.



5.4.



5.5.



5.6.



5.7.



5.8.



5.9.



5.10.



6. Registered Landowners

6.1. The two owners of the land affected by the application are:

The Walton Building Management Company Limited of Flat 6, The Walton Building, North Street, Mere, Wiltshire, BA12 6HU.

Lipscombe Developments Limited of The Boardroom, The Square, Mere, Warminster, Wiltshire, BA12 6DL.

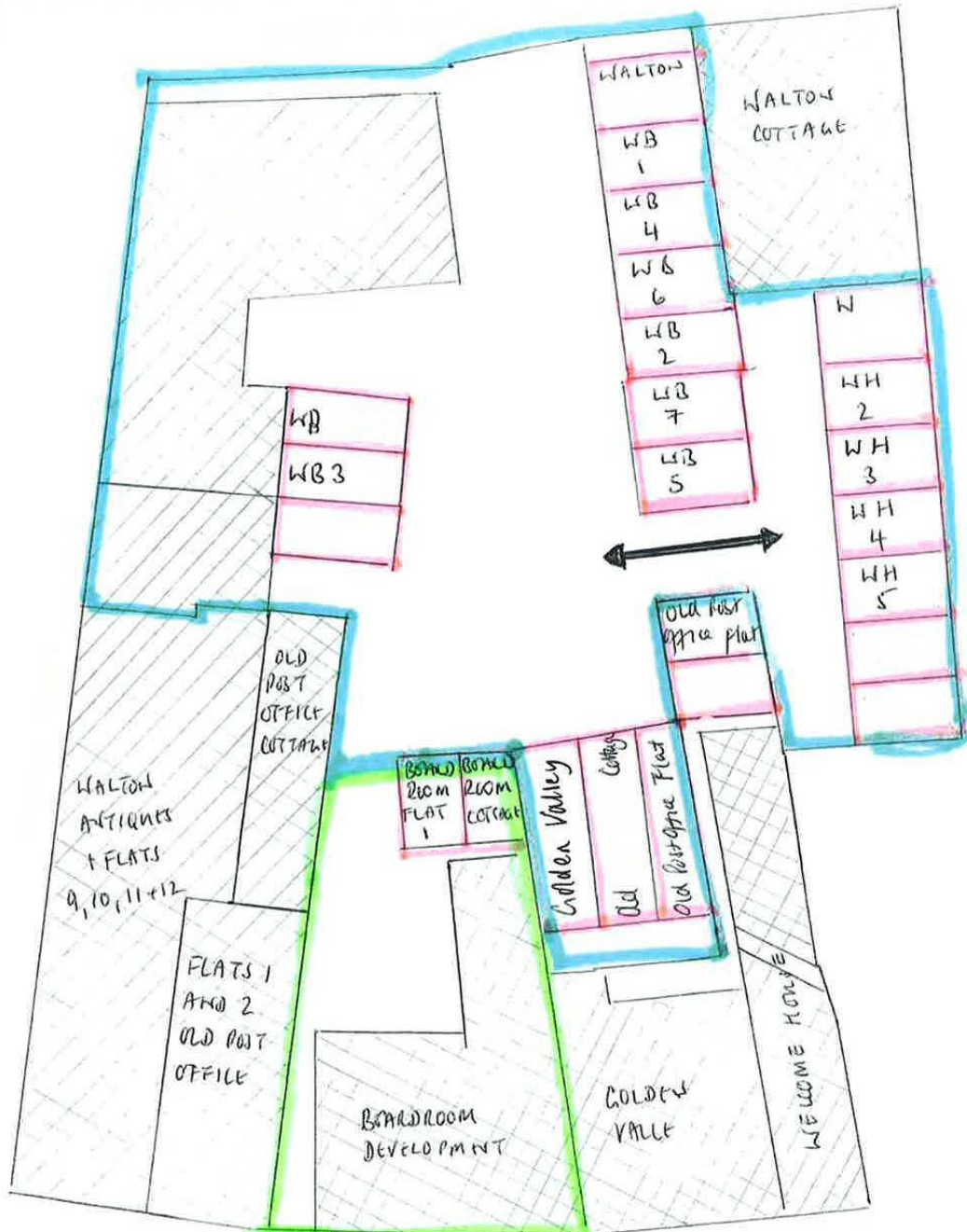
The two landowners have been contacted through the following contacts;

The Walton Building Management Company- c/o Saffron Reilly-Stitt, Gilyard Scarth Lettings, The Old Coffee Tavern, Salisbury Street, Mere, BA12 6HA.

Lipscombe Developments Limited – Mr Andrew Lipscombe (Joint managing director) , Lower Langham Barn, Langham Lane, Gillingham, Dorset, SP8 5NT.

6.2. The below map shows the areas of ownership of the land in question.

The land owned by The Walton building Management Company edged in blue and the land owned by Lipscombe Developments edged in green. Various other parking and other space ownership through tenant and leasing agreements are edged in red but the two landownership areas that are affected by the footpath claim are clearly edged in blue and green.



7. **Background**

- 7.1. Wiltshire Council are in receipt of an application made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way, in the parish of Mere. The claimed route leads from The Square, Mere leading in a northerly direction for approximately 57 metres to North Street, Mere. The application is dated 24th April 2018 and is made by Graham Sams of 22 White Road, Mere, BA12 6EZ on the grounds that public footpath rights can be reasonably alleged to subsist or subsist over the land, on the balance of probabilities, based on user evidence and should be recorded within the definitive map and statement of public rights of way. It is noted Cllr George Jeans has been the main point of contact for the application not Mr Sams whose name the application is made under.
- 7.2. The applicant, had served formal notice on one of the landowners, Mr Richard Lipscombe of Lipscombe Building Contractors, Lower Langham, Langham Lane, Gillingham, SP8 5NT using the "Form of Notice of Application for Modification Order as set out in regulation 8(3) Schedule 7 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 SI 1993 No 12. The Walton Building Management Company did not have formal notice served to them by the applicant but have since been consulted. The application came with a map showing the claimed route and was accompanied by a number of user evidence forms and statements from supporters.

8. **Initial Consultation**

Wiltshire Council undertook an initial consultation regarding the proposal on 23rd May 2018. User groups, Mere Town Council, landowners, the Council member for area, and neighbouring properties were consulted. The consultation letter had an end date of 6th July for comments and replies. It soon became apparent not all tenants and residents of the surrounding flats and businesses had been consulted and as such further letters were sent consulting as many people in the area as feasible.

- 8.1. Replies were received from the following people, the replies can be seen in full at appendix 1 to this report.

- Mere Town Council – in support
- Mr Lipscombe (Landowner) – objecting
- The Walton Building Management Company (Landowner) - objecting
- Mr and Mrs D’Silva (local resident) – in support
- Mrs Moody (local resident) – in support
- Mrs Ackerman (local resident) - objecting
- Mr Morris (local resident representing Welcome House residents) - objecting
- Jo Oliver and Simon Richards (local residents) - objecting
- Ms Main (local resident) - objecting
- Mr May (local resident) - objecting
- Mr Holder (local shop owner) – provided evidence
- Mr Crump - objecting

Further investigations were undertaken and evidence has been received from Mr Finan (previous landowner), Mrs Young and Mr Squires. All responses and evidence will be considered later in the report.

9. Main Considerations for the Council

- 9.1. The definitive map and statement of public rights of way are conclusive evidence as to the particulars contained therein, however this is without prejudice to any question whether the public had at that date any right of way other than that right. Wiltshire Council is the Surveying Authority for the County of Wiltshire, excluding the Borough of Swindon. The Surveying Authority is the body responsible for the preparation and continuous review of the definitive map and statement of public rights of way. The Wildlife and Countryside Act 1981 Section 53(2)(b) applies:

“As regards every definitive map and statement the Surveying Authority shall-

- (a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and*

(b) *as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date, of any of these events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.”*

9.2. The event referred to in subsection 2 (as above) relevant to this case is:

“(3) (c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or subject to section 54A, a byway open to all traffic.”

9.3. Section 53 (5) of the Act allows any person to apply for a definitive map modification order under subsection 2 (above), as follows:

“Any person may apply to the authority for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection.”

9.4. Schedule 14 of the Wildlife and Countryside Act, states:

“Form of applications

1. *An application shall be made in the prescribed form and shall be accompanied by:*

(a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and

(b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.”

The prescribed scale is included within the “Statutory Instruments 1993 No.12 Rights of Way – The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993”, which states that “A definitive map shall be on a scale of not less than 1/25,000.”

2. (1) *Subject to sub-paragraph (2), the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates*

(2) *If, after reasonable inquiry has been made, the authority are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land to which the application relates, the authority may direct that the notice required to be served on him by sub-paragraph (1) may be served by addressing it to him by the description ‘owner’ or ‘occupier’ of the land (describing it) and by affixing it to some conspicuous object or objects on the land.*

(3) *When the requirements of this paragraph have been complied with, the applicant shall certify that fact to the authority.*

(4) *Every notice or certificate under this paragraph shall be in the prescribed form.*

9.5. Section 31 (as amended) of the Highways Act 1980, refers to the dedication of a way as a highway, presumed after public use for 20 years:

“(1) *Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*

(2) *The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*

(3) *Where the owner of the land over which any such way as aforesaid passes –*
 (a) *has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and*

(b) has maintained the notice after the 1st January 1934, or any later date on which it was erected, the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

(4) In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so however, that no injury is done thereby to the business or occupation of the tenant.

(5) Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as highway is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as highway.

(6) An owner of land may at any time deposit with the appropriate council-
(a) a map of the land on a scale of not less than 6 inches to 1 mile and

(b) a statement indicating what ways (if any) over the land he admits to having been dedicated as highways;

And, in any case in which such a deposit has been made, statutory declarations made by that owner or by his successors in title and lodged by him or them with the appropriate council at any time –

(i) within ten years from the date of deposit

(ii) within ten years from the date on which any previous declaration was last lodged under this section,

to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgement of such previous declaration, as the case may be, are, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

(7) *For the purpose of the foregoing provisions of this section, ‘owner’, in relation to any land, means a person who is for the time being entitled to dispose of the fee simple in the land; and for the purposes of subsections (5) and (6) above ‘the appropriate council’ means the council of the county, metropolitan district or London Borough in which the way (in the case of subsection (5)) or the land (in the case of subsection (6)) is situated or, where the land is situated in the City, the Common Council.*

(7A) *Subsection (7B) applies where the matter bringing the right of the public to use a way into question is an application under section 53(5) of the Wildlife and Countryside Act 1981 for an Order making modifications so as to show the right on the definitive map and statement.*

(7B) *The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.*

(8) *Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public and statutory purposes to dedicate a way over land as a highway if the existence of a highway would be incompatible with those purposes.”*

9.6. Section 32 of the Highways Act 1980, states that the authority may consider a range of historical documents and their provenance:

“Evidence of dedication of a way as highway

A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was

made or compiled, and the custody in which it has been kept and from which it is produced.”

10. Documentary Evidence

10.1. Ordnance Survey (OS) maps covering the area have been viewed at The Wiltshire and Swindon History Centre in Chippenham to ascertain if any historical evidence could be found of a public right existing over the claimed route. The earliest map viewed was the Inclosure award which can be seen below.

1821 Inclosure Award for Mere



The area of the claimed path between The Square and North Street can be seen on the above Inclosure award and at that time the area can be seen as being split into a at least two narrower plots of land compared to the current modern layout. There is no public road or path recorded at the location of the claimed footpaths location.

10.2 OS Map 1887 1:2500

(The red lines drawn on the map appear to be a later addition)



10.3. OS Map 1901 1:2500



10.4 OS Map 1925 1:2500



10.5. OS Map 1942 1:2500



10.6. In the maps above it can be seen that no recorded footpath or any other path was recorded on any of the OS maps dating back to 1887. It should be noted from 1888, OS maps carried

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a disclaimer that the representation of a track or way on the map was not evidence of a public right of way.

10.7. The preliminary step to creating the definitive map of public rights of way as a result of the National Parks and Countryside Access (NPACA) act 1949 was for each parish to submit a map to the county council marking the public rights of way which they believed existed in their parish. The parish claim map submitted by Mere Council can be seen below.

10.8. Mere Parish Claim map- surveyed 1951



10.9. Looking at the parish claim map and the historic OS maps it can be seen that the claimed route subject to this application has not been claimed as a public right of way in the past.

10.10. The 1952 Mere and Tisbury Rural District Council Definitive Map does not record the route as a public right of way.

10.11. In summary, no evidence has been found that the claimed route has been recorded as a public footpath or a path of any kind in the various documents examined.

11. Twenty Year Use

11.1. Section 31 of The Highways Act 1980 states: (see paragraph 9.5 of this report for section 31 in full)

“(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

11.2. The period of 20 years is taken as 20 years counted back from the date that the way was first called into question. There are possibilities for a number of 20 year periods in this application depending on what event is deemed to have brought the way into question. The application was applied for in 2017 after the reported locking of metal gates at The Square end of the claimed route which stopped people from being able to use the route. If this event is deemed to be the calling into question of the route then the 20 year period of consideration would be 1997-2017. There is evidence which will be discussed later in this report which could demonstrate that the way was brought into question at an earlier date and as such the relevant period to be considered could be earlier. Unless stated otherwise the relevant period being considered in this report is 1997-2017.

12. User Evidence Forms

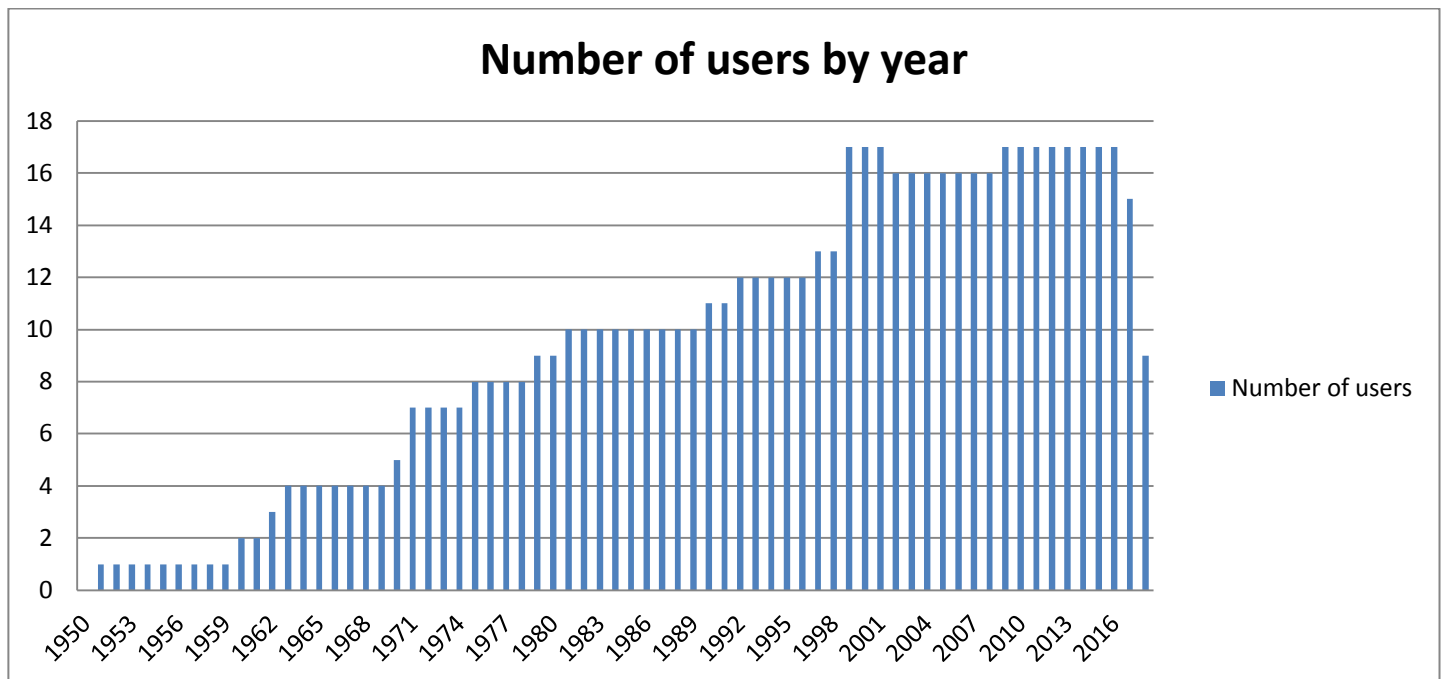
As part of the application, a total of 24 witness forms have been submitted as evidence (one user has submitted two forms). The use of the way claimed by the 23 individual forms covers the period 1940s-2017.

12.1. When considering the relevant 20 year period of 1997-2017 in this case, of the 23 users, 15 claim to have used the route for the whole 20 year period of 1997-2017. However 2 of these users have stated they had permission to use the route which would mean their use was by right not as of right and so cannot be considered under this legislation. Another user has clarified she does not remember solid wooden gates on the route but does not remember going through them or using the route as a whole but this was many years ago and due to ill health does not wish to be contacted about this in future. Removing these 3 users for the aforementioned reasons we are left with 12 users claiming to have used the route as of right for the whole 20 year period. These 12 claim to have used the route on a frequent basis, with 7 of them claiming use on a daily basis, 3 on a weekly basis and 2 using the route rarely perhaps once every few months (originally in their forms they claimed weekly usage but after clarification they now claim their use of the route to be rarely, perhaps every few months). 5 users claim to have used the route for 10+ years in the period 1997-2017 on a daily or

weekly basis, and a further 2 users claim to have used the route for a period of less than 10 years during the period 1997-2017 on a varied frequency. One user failed to fill out the years of use claimed, attempts have been made to clarify this by letters but to date no response has been received so this user cannot be considered.

In total with 2 users having permission, one having clarified she did not use the route as a whole and does not wish to be contacted further due to ill health and one user not filling out their years of use we have 19 user forms filled out who are claiming use as of right covering a 20+ year period.

12.2. Below is a chart showing the number of individual users who claimed use in each year. (The two users who answered yes to being given permission to use the route and the 1 user who does not wish to be contacted further and upon further investigation did not use the route as a whole are not included in the chart below.



For the 20 year period (1997-2017) it can be seen that between 13 and 17 individual users are using the path each year, with the claimed use increasing in the late 1990s. This could be due to the increase in population of the town or that persons using the routes further back in time have either passed on or moved away from the area. Consistent use, albeit by fairly low numbers for a town with a population of 2,961 in 2011, can be seen going back to the

1970s. The earliest claimed use dates back to the 1950s although this and many other points are disputed by other accounts given which will be discussed later in this report.

- 12.3. There is no statutory minimum level of users required for the presumption of dedication. The quality of the evidence i.e its honesty, accuracy, credibility, and consistency are of much greater importance than the number of users.

In R (Lewis) v Redcar and Cleveland Borough Council UKSK 11 (03 March 2010), a Town and Village Green registration case, Lord Walker refers to Mr Laurence QC, who:

“...relied on a general proposition that if the public (or a section of the public) is to acquire a right by prescription, they must by their conduct bring home to the landowner that a right is being asserted against him...”

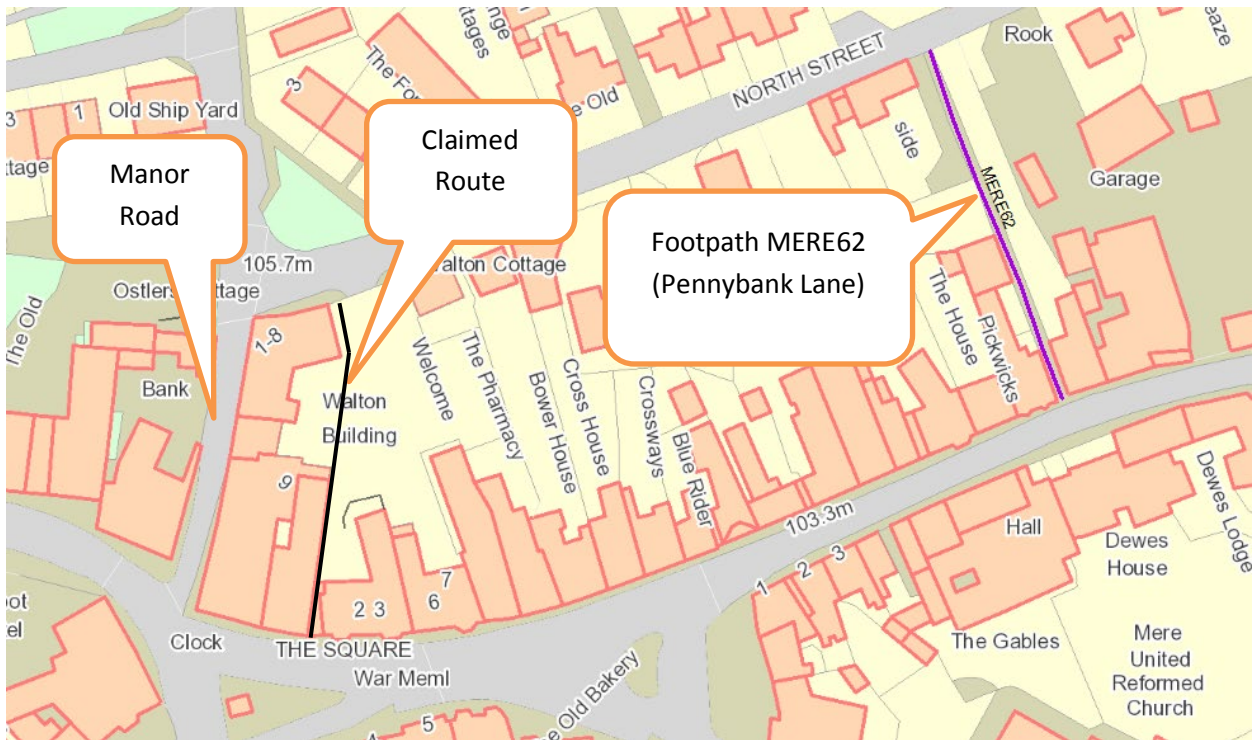
Lord Walker goes on to quote Lindley L J in the case of Hollins v Verney [1884] giving the judgement of the Court of Appeal:

“...no actual user can be sufficient to satisfy the statute, unless during the whole of the statutory term...the user is enough at any rate to carry to the mind of a reasonable person who is in possession of the servient tenement the fact that a continuous right to enjoyment is being asserted, and ought to be resisted if such right is not recognised and if resistance to it is intended.”

- 12.4. What must be considered is the level of user, in this case 19 users using the route as of right over some or the whole of the 20 year period (97-17). The use of the path can be seen to be increasing in recent years (see chart at 12.2). It should be noted the population of Mere has increased in recent years, with a recorded population of 2,085 in 1971 and 2,961 in 2011 (figures taken from history.wiltshire.gov.uk). We must consider whether or not this claimed use is sufficient to make the landowners aware that a public right was being asserted against them. The level of claimed use would indicate the owners/ occupiers of the land would have been aware of the path being used if present. However the path is a route to the back of shops and through a private car park to flats which the residents would have access to, so the urban nature of the route would mean seeing people on the path or in the vicinity of the path would not be unusual to any owner or occupier. The claimed path would be a natural route / shortcut to use from the centre of Mere , at The Square and through to North Street to residents who live in that area of Mere going to and from the town so from that perspective it would not be unreasonable to presume people would attempt to use the route if possible.

The use however is disputed by landowners from different time periods and the accessibility of the route is the main point of dispute which will be explored in detail.

12.5. The 23 people who filled out witness forms had an opportunity to give extra comments or observations at the end of the form. Many of the users have stated in various communications that the claimed path is a safer route to use than the alternative via Manor Road which is to the west of the claimed route and can be used to traverse between North Street and The Square. This section of road does not have a pavement and is a narrow section of road making it dangerous for pedestrians to use. As such if the claimed route is not available the closest alternative is Manor Road which is not particularly safe for pedestrians. There is a public footpath MERE62 (Pennybank Lane) approximately 100m to the east of the claimed route which also links North Street and The Square/ Salisbury Street, some of the users claim this route is too narrow to use in a wheelchair. See map below showing locations of Manor Road, the claimed route and Pennybank Lane, also a photo of Manor Road looking south towards The Square, Mere.



The above photo does demonstrate that Manor Road is not particularly safe for pedestrians. The point raised by users regarding this alternative may be valid; however the safety of alternatives is not something which can be considered under the legislation. This application can only consider the route claimed as a public right of way and if the use has been as of right and meets the tests set out in s.31 of the Highways Act and s.53 of The Wildlife and Countryside Act 1981.

13. Objections

- 13.1. As part of the consultation process the landowners were consulted. The two landowners affected are Lipscombe Builders Limited and The Walton Building Management Company Limited.
- 13.2. Both landowners objected to the path being recorded as public right of way. Their responses can be seen at Appendix A.
- 13.3. The Walton Building Management Company submitted a landowner evidence form as part of their response and in that form it can be seen they were aware of people using the route but have taken no action to stop people using it. No signs were erected to inform people the way is not a dedicated public right of way and no barrier of any kind has been erected to stop people from using the route. No challenge or permissions have been communicated by the owner of the land either. They do state there were gates at point B, which is not in their ownership, but they were unaware if the gates were locked or not. The Walton Building Management Company do object to the right of way and state “prior to the gates being locked there had been low level vandalism and noise issues”. Alternative routes from North Street to The Square via the road or Pennybank Lane are well established and authorised routes”. Both issues of vandalism/ noise levels and alternative routes cannot be considered under the legislation applicable to this application. No points raised in The Walton Building Management Company’s submission would defeat an application made under s.53 of the Wildlife and Countryside Act 1981 to record a public right of way, if the evidence was sufficient to satisfy s.31 of The Highways Act 1981, over land in their ownership.
- 13.3. Mr Andrew Lipscombe of Lipscombe Developments Ltd submitted a response, comprising of a letter, photos and a landowner evidence form. Mr Lipscombe objects to the way being recorded as a right of way. The main points raised in the letter in objection are there are alternatives to using the claimed route, the land when purchased did not show a public right of way but has private rights over it, the route leads over what is now a private courtyard area for residents of the flats, the gates have been locked at various points in time, including during his ownership, the way has been blocked at other times during construction work, signs were erected on the route stating it was private and when the gates are unlocked the covered area of the path can be a target for vandals.

Points of objection must be considered against the legal tests applicable to this application.

The facts there are alternatives (see 12.5.) cannot be taken into consideration. There may be

private rights over the land for residents of the flats, any individuals who have this private right could not be considered to have used the route as of right but would be using the path by permission and could not be considered as a user as of right. However the existence of private rights does not exclude any individual who is not privileged with these private rights from claiming their use of the route as of right and it is the evidence as of right presented to the council which is being considered. The privacy of the residents and potential intrusion of this can be sympathised with, however it is not a consideration under the legislation. The same applies the vandalism and nuisance potential if the way is recorded as a right of way.

14. Gates

The gates are a main point of consideration and conflict in the evidence given. The locking or non-locking of the gates, the existence of the large wooden gates and if the gates were open, barred or locked is in conflict.

14.1. Mr Lipscombe claims the metal gates were locked at various times to his knowledge. He claims that upon purchasing the property from Mr Finan, he remembers the gates being unlocked by Mr Finan at that time, the gates being referred to are the metal gates that can be seen in the photo at 5.1. See below photos provided by Mr Lipscombe showing the view of the archway and gates from The Square looking north and the second photo looking south towards the gates from the courtyard area.

14.2.



14.3.



14.4 Mr Lipscombe also claims the large wooden gates which were situated behind the metal gates- see above photo showing the large wooden gates,- were bolted shut and that Mr Finan also locked and bolted the gates during his ownership (see 14.5. re Mr Finan). It is also stated that during the two year construction period after purchase (approx. 2007-09), turning the building into flats, the gates were locked on and off throughout that period.

14.5. Mr Finan was contacted and a meeting was arranged for 7th September 2018 to discuss his knowledge of the path as a previous owner of the land affected. Mr Finan owned the land from 2004-2007 and during his three year ownership he is adamant he locked the metal gates and braced the large wooden gates most if not all of time and therefore there was no way for the public to use the route. Mr Finan stated the padlock on the gates was removed 3 times from the metal gates by persons unknown and was replaced. He also states he denied permission when asked if the route could be used and turned people away from using the route. (See Appendix 2 to this report for Mr. Finans' form)

14.6. Mr Finan gave the contact details for a Mrs Young who he believed may have more knowledge of the path in question. A letter was sent to Mrs Young and she replied on 25th

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September (see appendix 2), in her letter she states her family lived in flat 3 of the Walton Building , which abuts the claimed route from ... until 1989. She states the footpath in question was not a passage and there was a garden at the rear of the property which was converted to a car park in the 1970s as it is now. Mrs Young also states there were two wooden gates one behind the iron ones (presumably the ones still in place in Mr Lipscombes photos at 14.3.) and one at the end of the yard to maintain privacy. If these gates were in place and the car park was a private garden/courtyard area the route would not have been passable to the public. Mrs Young also states she has seen a chain around the iron gates since her family gave up the lease of the flat in 2000 from Mr Clifford who owned the building for years, but did not attempt to get through as she has no need to.

Efforts have been made to trace Mr Clifford but these have been unsuccessful, it is understood he has since passed and contact with the family has been lost in Mere.

14.7. Mr Sam Squires was contacted in relation to his knowledge of the route, as it came to officers' attention he leased or owned a shop immediately adjacent to the archway. Mr Squires was contacted by telephone on 21/01/19 and 06/03/2019 in those conversations he was unsure of the exact dates he had the shop adjacent to the archway but believed it to be approximately 1979-1985 in the first conversation (it is noted these dates differ from the notes Cllr George Jeans has from a conversation he had with Mr Squires which state Mr Squires was there until 1991) .During the second conversation it was put to Mr Squires other people believe he locked the gate until 1991 to which he said it was possible but he could not be certain of the years off the top of his head. During the conversations Mr Squires stated the claimed route was not a thoroughfare and the metal gates were locked from Saturday evening to Monday morning and the wooden gates would have also been braced, which would have prevented anybody from opening them from the southern side. He particularly remembered locking the gates during the Christmas period during the day to stop stock being stolen that was stored out the back. He also stated in earlier years it was private gardens and nobody walked through. He was aware of the odd person using it during the daytime but this was stopped at night , Saturday evening through to Monday morning, over the Christmas period and various other times during the daytime.

Mr Squires was unsure of some of the dates but said he submitted paperwork in relation to the case to Cllr Jeans. These papers have been asked for but Cllr Jeans can only find a note his wife made saying Mr Squires locked the gates at night, the last time being in 1991.

14.8. Mr Holder contacted Wiltshire Council as owner of the Brainwave shop and the building behind it (which abuts the claimed route) in July 2018, see email below.

Dear Mr Harlow.

Further to my telephone message yesterday, I am the owner of the Brainwave Shop and the building behind it in Mere, Wiltshire, BA12 6DL.

I live in Scotland and, as such, am not quite up to date with local matters in Mere. I gather that there has been a consultation process regarding an application to make a private walkway through our properties into a public right of way.

I gather that one requirement for the creation of a public right of way is that it should have been in unencumbered use for the last 20 years. In fact, it has come to my attention that this has been claimed in a "dossier" of information.

This is absolutely not the case. I bought the property, which was then a disused warehouse, along the West side of the walkway in 2007. I then spent some 4 years renovating it. During this time the passageway was often locked for safety reasons and was also closed off by large wooden doors with an old fashioned system of brackets and wood brace. This effectively barred entry from the road side at nights.

I also put a laminated sign on the iron gates informing that it was private property and entry was restricted. This was in place for at least a year, before it was anonymously removed.

During the period when Lipscombe Builders were renovating the Boardroom property, on the other side of the walkway, the iron gates were usually locked.

The conclusion of this is that for a period of some 5 years, entry was locked for a good proportion of the time.

I look forward to your comments.

Best regards
Andrew Holder

Mr Holder was contacted and the process explained, on the 1st August Mr Holder sent the following email and photo.

Good morning Craig,

Thank you for ringing the other day, it was a very informative conversation.

I have trawled through all my back up disks and have found one photo of the rear entrance, by my property. I have put the date on it. I remember it well because it was just after I had bought the

property in August 2007 and the rendering had just been done, although the temperature had plummeted and I was worried about the mortar setting!

You can see the wooden doors, which were usually barred at night by putting a stout piece of wood across the brackets.

This was before any of the alterations were started by Lipscombe builders next door.

I'm afraid I could not find any photos of the Private Property sign I put on the front gate.

Best regards

Andrew Holder



14.

14.9. Various images of the gates in question have been produced. It was pointed out by Cllr Jeans the google street view image shows the iron gates from The Square. At the time of writing this report the image at that location shown on google street views shows one of the

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metal gates open with ply board seen in the archway, it would appear the development of the flats is still underway as sale signs for the flats are above the archway. The image is dated October 2011. In this image the one gate being open and ply board led against either wall in the archway would allow passage but not the wide passage some have stated they require or have used if in a wheelchair or with a pushchair, it is possible to see through the archway but due to the lack of light it is unclear if the wooden gates are present- if they are present they are open which may be expected as it is clear construction work is in progress.

14.10. Images of Mere can be found on www.francisfrith.com which show the centre of Mere and the archway / gates in question. The earliest image found is dated 1955 and clearly shows metal gates on the entrance to the archway that are open. Another image dated 1955 shows iron gates on the entrance to the archway and they are closed.

An image dated from 1965 shows the archway (from an oblique angle) and it can be seen there are no iron gates on the entrance at all, or at least not in the same location as before. A second image dated 1965 taken closer to the archway confirms there were no iron gates at the entrance, however on both 1965 images it is not possible to see more than a metre or so down the archway due to the angle of the image.

14.11. Mrs Reynolds as part of her user evidence form also attached an image from a postcard dated 1971 showing The Square, Mere and in the image the archway is visible from an angle with no iron gates on the entrance way. Again it is not possible to look down the archway from the image.

It is not possible in the images from the 1950s or 60s or the postcard Mrs Reynolds says is dated 1971 to see if the wooden gates are in place behind the metal gates due to the angle of the images.

14.12. Cllr Jeans submitted a DVD which is a video of a march through the town of Mere dated 11.July 2004. In this video at 1 minute 47 seconds in, it is possible as the procession passes to see the archway from The Square and the iron gates are present and open at that time. Unfortunately later in the video as the procession is marching back past the archway the video skips past the location of the archway so it is not possible to see the situation at that time. It is not possible during the pass by of the archway on the video to see down the archway and see if the wooden gates are present.

14.13. The user evidence forms submitted offer a clear account of the gates from their perspective. Of all the forms submitted only one of the forms – from the lead applicant Mr Sams- stated

they had any knowledge of locked gates at any time until the recent events in 2017 which led to this application. It should be noted Mr Sams submitted one form dated 2/11/17 and one dated 23/10/18. In the earlier form Mr Sams states when asked “Have there ever been any of the following on the application route?” in response to section b referring to gates , “Last locked or chained Christmas time prior 1989 information given by Mrs Jean Young, also Sam Squires, Wincanton chained gate usually at night to when he left March 1991”. In response to the same question on the form dated 23/10/18 Mr Sams states “Iron gates have never been locked until now”. It is repeated in the earlier form at question 11 which asks “Did any of the above prevent you from using the application route? When Mr Sams answers “As said prior 1989 locked at Christmas also upto March 1991 locked at times by Sam Squires as above”. Some clarification is given at question 22 asking for any further information in the early form where it is stated “I and my family aware from statement of Jean Young prior to 1989 was closed at Christmas however we have never seen or found gates locked usually never closed. Since 1989 my family and I have never seen closed or locked. May have been pushed together on occasion but never locked except at night on occasion 1989 to March 1991 as stated before. We know upto mid 1990s other obstacles in the way but not locked.” In the later form at the same question this information is not repeated but answered saying the route has been used by his family and the alternative is unsafe. The dates of use in Mr Sams forms also differ in the first form where it is stated he used the route “definitely from 1991 and also I believe previously to 2017 when locked. The later form states 1960 to present time until they’ve been locked”.

Clarification was sought by phone on 13/02/2019. During that conversation Mr Sams clarified his use of the route has been mainly since 1991 but he did use the route previously back to the 1970s with his wife. The obstacles he referred to in his original form in the mid-1990s were wooden gates and post vans parked in the vicinity. The wooden gates could be walked through via a smaller inset door if closed. In reference to the locking of the gates Mr Sams clarified Mr Squires did lock the gates “on and off” until 1991 but possibly earlier years as well, he could not be sure of dates. He was also aware Mrs Young’s husband locked the gates in this period (late 1980-90s) also.

14.14. There is a clear conflict of evidence on the issue of locked or braced gates. The current landowner Mr Lipscombe states the gates were locked or route blocked at various times between 2007 and 2010. The previous owner Mr Finan states he locked the gates consistently between 2004-2007. Mr Holder from 2007-2011 states the gates were often locked while he was doing work on the alleyway and provided a photo showing the large wooden gates in place which he says were often braced at night so could not have been

opened from the south side. Mr Squires has been quoted as saying he locked the gates at night from 1989-1991, however on the phone to officers he stated he did this from 1979-mid 80s and also did so at times during the day to protect stock. Mrs Young is quoted by Mr Sams as saying the gates were locked at Christmas time prior to 1989. Mrs Young was contacted by letter and phone for clarification on her knowledge of the route. She stated on the phone that the area behind the building was a private area and not a car park until sometime in the 1970s. The gates were always in place and the wooden gates were barred at times, especially if the family went away on holiday. Mr Sams first form states knowledge that the gates were locked at Christmas time prior to 1989 and by Mr Squires at night up until 1991, the dates and times Mr Squires locked the gates is not clear but it appears to have occurred between 1979 and 1991, the fact he did lock the gates at night is in agreement between Mr Sams the lead applicant and Mr Squires. This body of evidence stating the gates were locked or braced is in contrast to the majority of user forms which gave no knowledge of large wooden gates at all and no knowledge of locked gates until 2017.

14.15. In face of this conflict a letter was sent to all users who submitted a user form, see below, to seek clarification on the issue of gates and the route not being available for the public prior to time the car park was built in the 1970s. The letter was sent on 22nd January 2018.

Dear

Wildlife and Countryside Act 1981 s.53

Application for an Order to add a footpath to the definitive map and statement at The Square, Mere

I am writing to you in reference to the user evidence form you have filled out and submitted in regards to the footpath claim in Mere linking The Square and North Street.

As part of the council's investigation into this application, evidence has come to our attention that contradicts your own given evidence.

It is our duty to investigate all evidence and get to the truth of the matter to the best of our ability before making a decision to make an order to record a public footpath or not.

The evidence which has come to our attention states the route was blocked, at various times, by either locked metal gates or braced large wooden gates at The Street end of the path by the road, the locking/bracing of the gates being consistent at night and at times during the day. The years in which it has been claimed the gates were locked or braced at different times cover the periods 1979-1985 and 2003-2010. It has also come to our attention the nature of the path / alley changed significantly in the 1970s and before this period it was private gardens and would not have been useable by the public.

I would appreciate your response to the above statements in relation to your given evidence; do you have any knowledge of the route being blocked by gates of any kind? Did you ever come across locked or braced gates when trying to use the route? If you used the path before the mid/early 1970s what are your memories of the nature/ route of the path used, did it look similar to now or has it significantly changed? Or if you have any further information you feel would be helpful in addition to the evidence or statement you have already provided I would be pleased to receive this.

If the council do make an order to record a public footpath it is likely it will result in a public inquiry where the success of any order would be reliant on your evidence being cross-examined by an inspector appointed by The Planning Inspectorate and/ or a barrister appointed by objectors.

Please reply to this letter with your comments as soon as possible and in any case by the 8th February 2019. I have enclosed a pre-paid envelope for your use and alternatively my contact details are below on which I can be contacted by email or phone to discuss the above.

Enclosed: Map of the area for any annotation you may wish to make.

Yours

Craig Harlow

Rights of Way Officer

Direct line: 01249 468568

Email: craig.harlow@wiltshire.gov.uk

14.16. In response to this letter which was sent to everyone who filled out user forms and people who filled out the initial petition statements.

A total of 10 letters or email responses were received and a further 4 phonecalls were received in relation to the letter. Letter responses can be seen at appendix 3. Phonecalls were received from Judy Hingley, Shirley Reynolds, Michael Durkee and Leonard Hardcastle. The responses from Judy Hingley, Mr Durkee and Mr Hardcastle it is assumed also apply to their spouses or children but this was not confirmed, ie Simon Hingley, Vanessa Hardcastle, Margaret Durkee.

Responses to the letter that clarified any issues or changed their initial statements are;

- Shirley Reynolds – confirmed she did not remember wooden gates and does not remember going through them and as such did not use the whole route claimed. She does not wish to be contacted any further due to ill health.
- Michael Durkee – clarified his use was not weekly as stated in his form but was every few months/ rarely since their children have not been in a pushchair which is for the last 30+ years. He has no memory of locked or wooden gates in place at all. Also if they were not using the route they may not have noticed if the gate was locked.
- Judy Ann Hingley – clarified she would not use the route if she could see the gates were closed from North Street as she would not be able to open them so did not go down to them so could not be sure if they were locked or just closed. Also would not use the route if bad weather as her husband would need to be there as she is in a wheelchair. She still believes her use of the route would be 2/3 times a week as stated in her form.

- Pat and Jenny Seward- They did not submit a user evidence form but did fill out the initial complaint forms which Cllr Jeans received after the locking of the gates. In their response to the letter they have stated “we can only refer to the period after 1979-1985 and from memory there was only a very short time when the gate was padlocked with a chain but was removed after protest”. It is unclear the precise dates they are referring to when the gate was padlocked and chained but the assertion is this is after 1985 so could be the late 80s/90s when Mr Squires or Mr Finan may have locked the gates.

The other responses stated they either had no memory of locked gate or wooden gates or did not mention them in their response. A number of the responses did reaffirm the desire to be able to walk the route as the nearest alternative is unsafe.

The letter did help to clarify the nature of some users use of the route, however there was no clear clarification of the conflict of evidence which still stands.

14.17. In summary the gates are a major point of conflict that needs to be resolved for an outcome ultimately to be reached. The given evidence currently contains 5 owners or tenants of property in the vicinity of the route stating the gates were locked or braced at some point in time, ranging from the earliest date of 1970s from Mrs Young through to various times in the 1980s, 1990s and 2000s. This is in contrast to almost all users (other than Mr Sams original form and now Mrs Reynolds who did not use the whole route) who claim to not have seen any lock on the gates or encountered braced large wooden gates and their use has not been impeded at any time before 2017. Some users have clarified they may not have seen a lock on the gate if there was one when they were not using it. This could particularly apply if the gates were locked at night or at the weekend by Mr Squires during his time on site and Mr Lipscombe and Mr Holder during their renovation work. Although no users (other than Mrs Reynolds and Mr Sams after clarification) remembered wooden gates behind the metal gates that could have been braced we can be sure they were in existence as the photographs from Mr Holder and Mr Lipscombe confirm this, although we do not know when they were installed or removed since. We do not have any physical evidence other than photos dated in the period 2007 that these wooden gates existed but Mr Finan states they were in existence from 2004-2007 and Mrs Young has confirmed there were wooden gates (unsure if these are the same gates as in the photograph) during the time she lived there in the 1970/80s. We also lack any physical evidence that the metal gates were locked from photographs or letters, we do have various photos of the metal gates in place either open or closed, from this we can conclude the gates were in place from at least the 1950s, but do appear to not be in place in photos from the 1960s but reappeared sometime after. Looking

at the photos the gates now in place do appear to be the same gates from the 1950s or at least very similar. We can also conclude from the physical evidence and the given evidence the gates were sometimes open and at times closed. Whether the gates being closed stopped anybody using the route is not clear, the metal gates could reasonably be opened if not locked, but if the wooden gates were braced they could not reasonably have been opened from either direction as even if approaching from the north and removing the presumably heavy brace any user could not have gone through the gates and replaced the brace and clearly it would not have been possible at all if approaching from the south.

Given the hugely conflicting given evidence by users of the route and others and lack of physical evidence to clarify the locking or bracing of gates (the physical evidence does confirm the large wooden gates were in existence in 2007) it is not easily possible to conclude on the balance of probabilities if the route was blocked by locked or braced gates at any time from the 1970s through to the late 2000s.

15. Alternate relevant periods

15.1. As has been seen above there is given evidence the gates were locked at times from the 1970s onwards. If it could be concluded the gates were locked and barred the public from using the route this would be an interruption to the public's use as of right of the route. This would mean the relevant 20 year period would need to be reconsidered. For example if Mr Lipscombe and Mr Holders accounts of the gates being locked and the route being blocked at various times due to construction were to be taken as the calling into question of the route then the 20 year period to consider public use as of right would be 1987-2007. Mr Squires account (backed by Mr Sams form) of locking the gates at night and at other times could also lead to a different 20 year period. It is unclear the exact years claimed this happened but Mr Squires on the phone stated 1979-mid 80s so this 20 year period would be 1959-1979, even Mr Sams recollection of 1989-1991 for Mr Squires locking the gate would give a 20 year period of 1969-1989. Mrs Youngs account of wooden gates being locked at times in the 1970s would lead to an even earlier 20 year period of 1950s-1970s. If these dates were the 20 year relevant period under consideration it would majorly affect the case as the number of users during any given period would be significantly less than the 20 year period of 1997-2017.

The earliest of these 20 year periods 1950s-1970s (no exact year given in the 1970s) would only have 1 user claiming to have used the path as far back as the 1950s, with a further 3 users claiming some use in the 1960s. This amount of use is unlikely to represent the 'public'

using the route and meet the legal tests of section 31 of the Highways Act 1980 and the application would likely fail.

Mr Squires locking the gates in 1979 would lead to a period of 1959-1979 again very few users claim use in the 1960s and a claim on the given evidence for that period would likely fail. As the possible 20 year periods progress , the level of use does increase but is still significantly less than the 1997-2017 period.

As no physical evidence has been produced to be certain of these interruptions to use and did not prompt an application ,as the locking of the gates in 2017 has, the period this report is considering is still 1997-2017, however it is acknowledged the periods mentioned above could be relevant if further evidence comes forward or if an inspector at a possible public inquiry deems appropriate.

16. Signs and Notices

16.1. The intention or lack of intention to dedicate a path a public right of way is addressed in section 31 of the Highways Act specifically addressing erecting notices or signs in the following sections

- (2) *The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*
- (3) *Where the owner of the land over which any such way as aforesaid passes –*
- (a) *has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and*
- (b) *has maintained the notice after the 1st January 1934, or any later date on which it was erected, the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.*
- (4) *In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so however, that no injury is done thereby to the business or occupation of the tenant.*

- (5) *Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as highway is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as highway.*

16.2. In this case there is a conflict of evidence concerning signs or notices on the route. Mr Lipscombe states in his evidence that “*Once complete, we left the gates unlocked but fixed PRIVATE signs to the gates and the fence to the rear. These were torn down (repeatedly) and in less than a week of putting them up. There is also a permanent private sign at the entrance to the Walton building car park for all to see.*”

Mr Holder also states he erected sign on the iron gates. “*I also put a laminated sign on the iron gates informing that it was private property and entry was restricted. This was in place for at least a year, before it was anonymously removed.*”

None of the users claim to have seen any kind of notice or sign on the route.

As can be seen above at 16.1 its is the landowners responsibility to maintain any sign or notice and if one is torn down section 31(5) does allow any landowner to inform the council such a notice or sign has been torn down. There is no record of this being reported to the council at this location.

16.3. The sign Mr Lipscombe refers to at the entrance to the car park can be seen in the below photo. (photos taken June 2018)



16.4. It can be seen the sign states “PRIVATE CAR PARK (RESIDENTS ONLY)”. The location of the sign can be seen in the second photo in reference to entering the site. If using the claimed route the sign is not obvious to anybody on foot as it is not in their direct eyeline and is somewhat lost in the vegetation on the other side of the car par. The wording of the sign if read by anybody using the route on foot does not make it absolutely clear it is designed to

stop or inform anybody they should not use the route as a footpath, or the landowner does not wish to dedicate the way as a public right of way. Many if not the majority of rights of way are over private land and this sign appears to informing people this a private car park and that only residents may park their cars here. It is not clear there is no right to walk through on the route claimed on the opposite side of the car park.

Given the location and wording of the sign it is not believed this sign would form an interruption of use or inform the public of the landowners intention regarding use of the route claimed on foot.

17. As of right

17.1. Section 31(1) of the 1980 Highways Act requires that the use by the public must have been as of right without interruption for a full period of 20 years.

The term 'as of right' is considered to mean without force (*nec vi*), without secrecy (*nec clam*) and without permission (*nec precario*).

Without Force

17.2. None of the users has declared in their form they used any force to access the path. The only barriers that have been mentioned in any form are the gates. None of the users claim to have used the route by breaking a padlock or damaging any barriers to use the route. Mr Finan does claim he padlocked the gates and the padlock was removed 3 times but it is not known by whom. There appears to be no force used in the claimed use of the route by the users who have submitted evidence.

Without Secrecy

17.3. There is no claim of secrecy involved with the use of the route. The landowners themselves may or may not have been on site at various times throughout the 20 year period and therefore able to see the use but various tenants and others will have seen the use. The use of the route, in the urban environment it sits, has not been carried out in secrecy and the landowner's would likely have been aware of its use.

Without Permission

17.4. Of the 23/24 user evidence forms, two have said they had permission to use the route. Susan Fricker and John Fricker both stated they had permission to use the route dating from the 1970s. Their statements are not clear as they both state they "think" they had permission

from Waltons to use the route. Mr Fricker states “during A303 build was given permission. I believe a committee was formed”. Neither have responded to the letter sent to clarify use.

18. Landowner’s intention

18.1. Under Section 31 of the Highways Act 1980, there is a presumption of dedication after uninterrupted public use of a route for a period of 20 years or more in a manner that is “as of right”, unless during that period, there can be demonstrated there was no intention on the landowner’s part to dedicate the land as a highway during that period. Intention to dedicate was discussed in the Godmanchester case, R (on the application of Godmanchester Town Council (Appellants) v. Secretary of State for the Environment , Food and Rural Affairs (Respondent) and one other action R (on the application of Drain) (Appellant) v. Secretary of State for the Environment, Food and Rural Affairs (Respondent) and other action [2007] UKHL 28, which is considered the leading authority in this matter. In his leading judgement Lord Hoffman approved the words of Denning LJ in the Fairey case, 1956: seen at paragraph 20 of the Godmanchester case:

“...in order for there to be “sufficient evidence there was no intention” to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the public who use the path...that he had no intention to dedicate. He must in Lord Blackburn’s words, take steps to disabuse these persons of any belief that there was a public right...”

18.2. In the same case, Lord Neuberger of Abbotsbury went further on this point in paragraph 83 of the case:

“...the cogent and clear analysis of Denning LJ in Fairey v Southampton County Council [1956] 2 QB at 458, quoted by Lord Hoffman, clearly indicated that the intention referred to in the proviso to section 1(1) of the 1932 Act was intended to be a communicated intention. That analysis was accepted and recorded in textbooks and it was followed and applied in cases identified by Lord Hoffman by High Court Judges and by the Court of Appeal for the subsequent forty years. Further, it appears to have been an analysis which was acceptable to the legislature, given that section (1) of the 1932 Act was re-enacted in section 34(1) of the Highways Act 1959 and again in section 31(1) of the 1980 Act.”

Lord Hoffman went on the say at paragraph 32:

“I think that upon the true construction of section 31(1), “intention” means what the relevant audience, namely the users of the way would reasonably have understood the owner’s intention to be. The test is...objective: not what the owner subjectively intended not what particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending, as Lord Blackburn put it in Mann v Brodie (1885), to “disabuse” [him] of the notion that the way was a public highway.”

18.3. A deposit can be made under s.31(6) Highways Act 1980 and section 15A (1) of the Commons Act 2006 declaring the public rights of way over the land in a person’s ownership and that no other ways have been dedicated as highways over that property. No record of such deposits have been found affecting the land in question in Mere. These deposits are available to be viewed online at http://php.wiltshire.gov.uk/row/sect31deposits/deposit_search.php . A duly made deposit under s.31(6) HA80 is, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

19. Width and Route

19.1. The route claimed by the users is consistent, with all users claiming the route from The Square through to North Street as seen at 4 of this report. Some users maps submitted as part of their user evidence forms were not clear and these users have been asked to clarify the route they are claiming. All users except one have now clarified the route they are claiming.

19.2. The width of the route claimed varies on the forms submitted, however it is clear on the ground the width of the route if recorded would be physically limited to the width of the alleyway and gateway. The width of the gateway is 1.8 metres and the alleyway narrows to 1.5 metres before reaching the car park. The width of the paved path across the car park is 2.15 metres. When asked what the width of the route is the answers from the users varies with answers such as, “2 metres”, “width of shopping trolley or pushchair”, “6 ft”, “for two people to pass except by gate”, “5ft ‘7”, “wide enough to walk”, “170cm”. It is clear any recorded width would have to be restricted by the physical limitations and such it would be recommended to record the paths width according to the measurements taken on site.

20. Common Law Dedication

20.1. Section 5 of the Planning Inspectorate's Definitive Map Orders: Consistency Guidelines suggest that even where a claim meets the tests under Section 31 of the Highways Act 1980 for dedication under statute law, there should be consideration of the matter at common law.

Dedication at common law may be considered where a way has been used by the public for less than 20 years. Where the origin of a highway is not known, its status at common law depends on the inference that the way was in fact dedicated at some point in the past.

A highway can be created at common law by a landowner dedicating the land to the public for use as a highway, either expressly or in the absence of evidence of actual express dedication by landowners, through implied dedication, for example making no objection to overt public use of the way. It also relies upon the public showing their acceptance of the route by using the way. Whilst the principles of dedication and acceptance remain the same in both statute and common law, there is a significant difference in the burden of proof, i.e. at common law the burden of proving the owners' intentions remains with the applicant. Whilst it is acknowledged that dedication of the route as a public highway may have taken place at common law at some time in the past, it is recognised that in practice evidence of such dedication is difficult to obtain and it is then more usual to apply Section 31 of the Highways Act 1980.

20.2. In this case I do not believe the landowners' actions have expressly dedicated the way as a highway. If the case goes to a public inquiry the inspector would have discretion to consider common law but at this time common law will not be relied upon for this case and section 31 of the Highways Act 1980 will be applied.

21. Conclusion

21.1. This application to add a footpath to the definitive map and statement in the parish of Mere has attracted a fair amount of local interest with 23 users submitting evidence via user forms claiming to have used the path during various periods over the last 20 years and beyond. 19 support forms were also submitted as the pre cursor to the application and user evidence forms (a number of the support forms are in the same name as user evidence forms). The application route is in the centre of the town and provides a cut through from the town centre through an alleyway and across a private car park to the houses to the north. The gate on

the end of the alleyway was locked by a resident of the flats in 2017 and use was challenged at that point leading to this application to be made.

21.2. The main weight of evidence in support of the application comes in the form of the 23 user forms. Having examined these forms there is use of the way claimed dating back to the 1990s and earlier in smaller numbers. It is clear the users wish to use the route as the closest alternative can be dangerous, on a road with no pavement, this motivation and desire for the path to be recorded as a public right of way cannot be taken into consideration, only the tests set out in section 31 of the Highways Act 1980. Some of the users have clarified points in their user evidence forms after investigation. A small number of users state they either had permission to use the route, have now stated they did not use the route, remember gates being locked or say the gates were closed and may have been locked or have amended their frequency of use of the route.

21.3. The objectors' body of evidence comes in the form of statements stating the metal and or wooden gates were locked or blocked during various periods covering 2004-2010. There is also evidence to suggest the metal gates were locked at an earlier period sometime between 1979-1991 by Mr Squires, who claims to have locked the gates Saturday evening – Monday Morning, at night and at times during the day if stock was out the back. This is substantiated by the applicant Mr Sams who remembers Mr Squires locking the gate at night sometime in 1991 or earlier. Mrs Young also recalls the gate being chained at some time and stated the way would not have been useable by the public before the car park was constructed in the 1970s as her family lived next to the route and it was a private courtyard area for the properties and was blocked by wooden gates. Officers have no reason to not believe the statements from these individuals and it would seem reasonable the gates may have been locked during construction periods, at night and Sundays by the owners or tenants of the adjacent shops. However this is clearly in conflict with many users who claim use dating back to the 1960s and more regular use in the 1990s and 2000s. Most users do not recall any wooden gates that it is claimed by objectors were braced and have not stated they recall these gates after a letter was sent investigating the issues surrounding the gates; however we can be sure these gates were in place in 2007 from photos provided.

21.4. The case of *Ashgar Ali v Secretary of State for Environment, Food and Rural Affairs; Essex County Council and Frinton and Walton Town Council* 2015 deals with a case to quash an order made under section 53 of the Wildlife and Countryside Act 1981 to modify the definitive map and statement for Essex. A main consideration of the case is similar to the Mere

application in dealing with the locking of gates between properties at weekends and public holidays. The order to record the path on the definitive map was made by an inspector at a public inquiry after the county council initially refused to make an order and were subsequently directed to do so by The Secretary of State. The order was objected to and a public inquiry was held to determine the order where it was confirmed, this decision was then appealed to the High Court. The main point for consideration was a door which was locked by owners of the adjacent properties on and off over a period of years over night and on public holidays and if the locking or closing of this door at those times was sufficient to communicate a lack of intention to dedicate the way by the landowners. Rhodri Price Lewis QC in his judgement at 20. states “ *I reach the conclusion that, even if the door had been locked on several occasions, this did not come to the attention of most users of the passageway and therefore did not bring into question the public’s right to walk through*”. This may appear to be in conflict with the *Godmanchester* case where the common method of closing the way one day a year is recognised as sufficient evidence showing the landowner had no intention of dedicating the way as a right of way. At para 33 of the *Godmanchester* case Lord Hoffman states “*sufficient evidence*” there was no intention to dedicate involves “*objective acts (that) must be perceptible by the relevant audience*”. The inspector of the initial inquiry states “*In the case before me, the majority of path users walked the Order route in the daytime since their purpose was related to the shops and businesses ... The fact that the door was closed at times most were not there did little to convey to users that the owner was taking actions to challenge their right to use the passage; locking it would have done so had his taken place at times when people were generally using it*”. In *Lewis vs Thomas Evershed* MR acknowledged “ *I agree that a barring , and particularly a deliberate barring of a way for an appreciable period would not necessarily lose its effect merely because no one happened to try to use the way during that period*”. In his conclusion of the appeal Rhodri Price Lewis QC said “*a locking of the door at Christmas when those shops and business were closed was not effective to provide “sufficient evidence” that there was no intention to dedicate because such acts on the part of the landowner would not be sufficiently overt to being to the attention of the public who used the way that the landowner had no such intention*”, the appeal was dismissed. It should be noted that a planning document in that case labelling the way as a public right of way in the words of the inspector “*inevitably weakens the link between his actions and the landowner’s intentions*” and contributed the inspectors decision to make the order.

21.5. Applying the case and appeal above to the Mere case it can be seen that although the *Godmanchester* case laid out that closing a way for one day a year can be interpreted as an

act of non-intention to dedicate, and is a common belief, its sufficiency is key and can only be decided on a case to case basis. It can be accepted it is likely Mr Squires did lock the gate at some time between 1979 and 1991, clearly the earliest of these dates needs to be narrowed down to a more precise date if possible. Did Mr Squires locking of the gate at night, and from Saturday evening to Monday Morning and possibly over the Christmas period sufficiently demonstrate the way was not intended to be dedicated as a right of way and interrupt use? Mr Sams who is the applicant does remember this but no other users do. Their use could have been outside of the time the gate was locked and as such it would not have brought the non intention to dedicate to their attention. However in the Ashgar Ali case the door was only locked at Christmas and at night, in this case Mr Squires claims to have locked the gate every night, at Christmas, Saturday evening through to Monday Morning and at times during the day which would perhaps be conceived to be sufficient to be an act of non-intention to dedicate and have brought it to the attention of many users of the way. Mr Sams who is the applicant clearly desires the path to be recorded as a public right of way but does remember the way being locked by Mr Squires, it seems appropriate to weigh this evidence strongly as an applicant whose evidence does not support their desired outcome. The locking of the gate by Mr Finan and Mr Lipscombe and Mr Holder is not supported by any user evidence but that is not to say it should be dismissed. There is no reason not to believe their accounts and it seems reasonable the gate would have been locked or route blocked particularly during construction work when materials and building work would have been taking place in a narrow alleyway.

- 21.6. The case of *R v Secretary of State for the Environment, ex p. Bagshaw and Norton*, Queen's Bench Division (Owen J.): April 28, 1994, deals with the applications of both Mrs Norton and Mr Bagshaw, who had applied to their respective County Councils for Orders to add public rights of way to the definitive map and statements, based upon witness evidence of at least 20 years uninterrupted public user and where the Councils determined not to make Orders. On appeal, in both cases, the Secretary of State considered that the Councils should not be directed to make the Orders. At judicial review, Owen J allowed both applications; quashed the Secretary of State's decisions and held that:

“(1) under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, the tests which the county council and the then Secretary of State needed to apply were whether the evidence produced by the claimant, together with all the other evidence available, showed that either (a) a right of way subsisted or (b) that it was reasonable to allege that a right of way subsisted. On test (a) it would be necessary to show that the right of way did subsist on the balance of probabilities. On test (b) it would be necessary to show that a reasonable person,

having considered all the relevant evidence available, could reasonably allege a right of way to subsist. Neither the claimant nor the court were to be the judge of that and the decision of the Secretary of State was final if he had asked himself the right question, subject to an allegation of Wednesbury unreasonableness. The evidence necessary to establish that a right of way is reasonably alleged to subsist is less than that needed to show that a right of way does subsist. The Secretary of State had erred in law in both cases as he could not show that test (b) had been satisfied.”

Owen J also held that:

“(2) In a case where the evidence from witnesses as to user is conflicting, if the right would be shown to exist by reasonably accepting one side and reasonably rejecting the other on paper, it would be reasonable to allege that such a right subsisted. The reasonableness of that rejection may be confirmed or destroyed by seeing the witnesses at the inquiry.”

21.7. Having considered all this evidence and case law, officers conclude it is reasonable to accept either side of the case for the applicants or the objectors and supporting witnesses. The case for the objectors and supporting evidence states the way was not useable pre 1970s as the way was private courtyard not a car park and was blocked by braced gates at various times. The gates were then locked /braced by Mr Squires as tenant of the adjacent shop he says from 1979 until 1991, most if not every night, from Saturday evening through to Monday Morning and over the Christmas period when he would lock gates to protect the stock out the back. This is supported by the lead applicant for the case, Mr Sams, who confirmed he does remember Mr Squires locking the gates in 1991 and “possibly earlier”. Mr Finan, Mr Lipscombe and Mr Holder claim to have locked the gate at various times during the period 2004-2010. Mr Finan claims to have locked the gate consistently during 2004-2007. Mr Holder and Mr Lipscombe claimed to have locked the gate at various times from 2007-2010 during construction works in the vicinity. The locking of the gates during construction periods would seem a reasonable and likely event. We are also provided with a photo of the wooden gates in place in 2007. If the gates were locked dating back to 1979 on the regular basis Mr Squires claims this would be sufficient in officers’ minds to bring to the attention of the users of the way the lack of intention to dedicate. As such the relevant 20 year period would need to be 1959-1979; in this case there is insufficient user evidence over that period to claim the public were using the way as of right. However we have no

incontrovertible evidence any locking of the gates occurred and it is conflicted by the user evidence.

21.8. The supporters case is that the route has been used as of right from 1997-2017 with a total of 19 users (after investigation), of the initial 23 who filled out user forms claiming use of the route during this period as of right. The 4 users whose use was not as of right or their evidence was insufficient after investigation are Mr and Mrs Fricker whose use they say was by permission (although the extent of this permission is not clear), Mrs Reynolds who claimed use back to the 1940s but now remembers wooden gates and did not use the route as a whole and no longer wishes to be contacted due to ill health and Mr Guy who did not fill out his form stating the years he used the route and has not replied to attempts to contact him to clarify his use.

Of the 19 users as of right, 13 would be willing to attend a public inquiry if this case reached that stage for their given evidence to be examined and cross examined. Of those 13, the main applicant Mr Sams, has confirmed he remembers gates being locked by Mr Squires in 1991 or earlier. Mrs Sams has not responded to the letter ref gates so it has not been confirmed if she also remembers gates being locked. Mr Durkee confirmed his use of the route was not weekly as claimed in his initial form but would be more accurately described as “rarely in the last 30 years”, this may also apply to Mrs Durkee. Judy Ann Hingley confirmed she used the route in a wheelchair but if approaching from the north side and looked down towards the gates and they were closed she would not use the route as she would not be able to open them, she could not be sure if the gate was locked or just closed. The closing of the gate locked or not, would appear to have been an interruption to her use. The same is likely to apply to Mr Hingley as he pushed Mrs Hingley in her wheelchair. Mr Leonard Hardcastle amended his frequency to an average of fortnightly from weekly, again the same may apply to Vanessa Hardcastle as Mr Hardcastle states he used the route with his daughter who is in a wheelchair as it is a safer route and Vanessa would appear to be his daughter. Mr Taylor confirmed he has not used the route since 2001 but during 1979-85 he does not remember the gates being locked but they may have been at some time. Mrs Crockin who claims use from 1963 has not responded to requests to confirm her route as her map is only marked with a star and has not replied to the letter requesting information of gates sent to all users. Mrs Ingram, Mrs Marris, Mrs Adams and Mr Nelson who are willing to attend a potential inquiry maintain their use from 1990s, 2009, 1970 and 1981 until recent times, respectively, and do not recall gates locked or closed on the route. There is also the body of evidence from users who may not wish to attend a public inquiry but have submitted

statements and user evidence forms of their use. The evidence from supporters can be interpreted as inconsistent, with some users now remembering gates, gates being locked, not using the route, the frequency of use changing and some use being by permission and a number of users stating they would not attend a public inquiry. There are still a number of users claiming to have used the way for the last 20+ years or part of the last 20 years and saw no locked gates and their use of the route was not interrupted in anyway.

21.9. The test as set out in Norton and Bagshaw (see 21.6) at the order making stage, namely test B, can it be reasonably alleged that a right for the public on foot subsists, is difficult to defeat and is a much lower test than test A which must consider the balance of probabilities which an inspector would have to consider if a made order was objected to and the case was determined by The Secretary of State. The council at this stage must consider test B and if this is not defeated then it is appropriate for an order to be made.

21.10. Owen J states in his decision of the Bagshaw case referenced at 21.6 that *“Whether an allegation is reasonable or not will, no doubt, depend on a number of circumstances and I am certainly not seeking to declare as law any decisions of fact. However, if the evidence from witnesses as to user is conflicting but, reasonably accepting one side and reasonably rejecting the other, the right would be shown to exist, then it would seem to me to be reasonable to allege such a right. I say this because it may be reasonable to reject the evidence on the one side when it is only on paper, and the reasonableness of that rejection may be confirmed or destroyed by seeing the witnesses at the inquiry”*.

21.11. Taking the above into consideration and applying it to this case it is clear if we reject one side of the evidence it is reasonable to allege a right subsists over the route in question. There are inconsistencies in the user evidence and coupled with the contrary evidence given by witnesses officers have doubt if test A, that a right subsist on the balance of probabilities, can be met. However as stated it is test B that must be considered at this stage of the process and a number of witnesses maintain their evidence given and as there is no incontrovertible evidence given to defeat S.31 of the highways Act 1980, test B is met if rejecting one side of the evidence and as Owen J stated *“the reasonableness of that rejection may be confirmed or destroyed by seeing the witnesses at the inquiry”*. Accordingly officers conclude an order to record a footpath between The Square and North Street, Mere should be made. If objections are received to the making of that order it will be appropriate to hold a public inquiry where witnesses can be cross examined on their given evidence.

22. Overview and Scrutiny Engagement

Overview and Scrutiny Engagement is not required in this case. The Council must follow the statutory process which is set out under Section 53 of the Wildlife and Countryside Act 1981.

23. Safeguarding Considerations

Considerations relating to the safeguarding of anyone affected by the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

24. Public Health Implications

Considerations relating to the public health implications of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

25. Environmental Impact of the Proposal

Considerations relating to the environmental impact of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

26. Equalities Impact of the Proposal

Considerations relating to the equalities impact of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

27. Risk Assessment

Considerations relating to the health and safety implications of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

28. Financial Implications

28.1. The determination of definitive map modification order applications and modifying the definitive map and statement of public rights of way accordingly, is a statutory duty for the Council, therefore the costs of processing such orders are borne by the Council. There is no mechanism by which the Council can re-charge these costs to the applicant.

28.2. Where no definitive map modification order is made, the costs to the Council in processing the definitive map modification order application are minimal.

28.3. Where a definitive map modification order is made and objections received which are not withdrawn, the order falls to be determined by the Secretary of State for Environment, Food and Rural Affairs (SoSEFRA). An Independent Inspector appointed on behalf of the SoSEFRA will determine the order by written representations, local hearing or local public inquiry, which have a financial implication for the Council. If the case is determined by written representations the financial implication for the Council is negligible, however where a local hearing is held, the costs to the Council are estimated at £200 - £500 and a public inquiry could cost between £1500 - £3000, if Wiltshire Council supports the order (where legal representation is required by the Council) and around £200-£500 if it does not support the order (i.e. where no legal representation is required by the Council as the case is presented by the applicant). Any decision taken by SoSEFRA is liable to challenge in the High Court, the council would bear no financial burden at this stage as the decision has been made by the SoSEFRA.

29. Legal Considerations

Where the Surveying Authority determines to refuse to make an order, the applicant may lodge an appeal with the SoSEFRA, who will consider the evidence and may direct the Council to make an order.

If an order is made and objections are received, the procedure is as detailed above in paragraph 28.3.

30. Options Considered

To:

- (i) Refuse to make a definitive map modification order, under Section 53 of the Wildlife and Countryside Act 1981, where it is considered that there is insufficient evidence that a right of way for the public on foot subsists or is reasonably alleged to subsist, on the balance of probabilities, or
- (ii) Where there is sufficient evidence that a right for the public on foot subsists or is reasonably alleged to subsist, on the balance of probabilities, the authority is required to make a definitive map modification order to add a footpath to the definitive map and statement of public rights of way, under Section 53 of the Wildlife and Countryside Act 1981.

30.1. Section 53(3)(b) requires that on the balance of probability a presumption is raised that the public have enjoyed a public right of way over the land for a set period of time. Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 provides that an order should be made if the Authority discovers evidence, which, when considered with all other relevant evidence available to them, shows that, on the balance of probabilities, a right of way subsists or is reasonably alleged to subsist over land in the area to which the map relates. This section allows for the consideration of common law and the inclusion of historical evidence and is the more commonly used section.

30.2 In considering the evidence under section 53(3)(c)(i) there are two tests which need to be applied, as set out in the case of *R v Secretary of State ex parte Mrs J Norton and Mr R Bagshaw*(1994) 68P & CR 402 (*Bagshaw*):

Test A: Does a right of way subsist on the balance of probabilities? This requires the authority to be satisfied that there is clear evidence in favour of public rights and no credible evidence to the contrary.

Test B: Is it reasonable to allege that on the balance of probabilities a right of way subsists? If the evidence in support of the claimed paths is finely balanced but there is no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then the authority should find that a public right of way has been reasonably alleged.

To confirm the Order, a stronger test needs to be applied; that is, essentially that contained within Test A. In *Todd and Bradley v SoSEFRA [2004] EWHC 1450 (Admin)*. Evans-Lombe J

found that the appropriate test for confirmation is the normal civil burden of proof that such a way subsists on the balance of probabilities.

Test B is the weaker test and only requires that it is reasonably alleged that public rights subsist. This allegation may only be defeated at the order making stage by incontrovertible evidence.

31. Reasons for Proposal

It is considered that there is sufficient evidence to meet test B as described in the above paragraph 21.11 that it can be reasonable alleged that public right on foot subsist over the route in Mere subject of this application. There is not sufficient incontrovertible evidence to reject test B which is accepted as a weak test but is the relevant test to be considered at this stage. There is significant contradictory and conflicting evidence in this case and applying the legal tests set out in case law it is appropriate to make a legal order to record the footpath and potentially in light of objections to a made order a public inquiry can be held where that evidence can be subject to cross examination. It will then be for an inspector appointed by The Secretary of State to determine on the balance of probabilities if public rights subsist. At this stage officers believe test B has been met as there is no incontrovertible evidence, whether test A is met and an order is capable of confirmation is not subject to this report.

32. Recommendation

That Wiltshire Council makes a definitive map modification order to record a public footpath in Mere between The Square and North Street subject to this application.

Craig Harlow
Rights of Way Officer
14 March 2019

This page is intentionally left blank

6 June, 2018

Flat 5, Welcome House
North Street
Mere
Warminster
Wiltshire BA12 6HH

Mr. Craig Harlow
Rights of Way Officer
Wiltshire Council
Rights of Way & Countryside Team
Waste and Environment
County Hall
Bythesea Road
Trowbridge
Wilts BA14 8JN

Dear Mr Harlow

Wildlife and Countryside Act 1981 s.53

Application for an Order to add a footpath to the definitive map and statement at The Square, Mere.

I did not receive a letter in respect of the above and I understand several of the residents in the Walton Building also did not get a letter – why?

This is my response to the above in respect of creating a right of way through our private car park and homes:-

- privacy issues – private properties. Affects those buildings alongside the path as it stands now, coming back through the gate from the Town, but would affect all of us in this complex;
- people would start to park their cars in the private car park again to cut through. There is already congestion issues, at certain times of the day, for residents getting in and out of the park;
- we have already experienced young people sitting in end of tunnel drinking, smoking – legal and other, urinating and leaving rubbish behind (this has been ongoing for a number of years), but being gated and locked has prevented these activities. Debris and filth was constantly monitored and this has abated since the above action was taken;
- danger issues – car park busy and private. People invariably have to reverse out of their parking place and turn in the parking area. We also have large vehicles coming and going. Each driver would, of course, be responsible when in control of their vehicle, but it places additional risks to pedestrians and residents if bicycles, prams, skate boards, youngsters, pets, etc. have access through our thorough fare;
- higher theft issues – items have been taken in the past from several of the properties. Having two exits just makes theft easier.

2/

Has the Highways considered making the pathway alongside the Walton Antiques and old Lloyd's Bank Building into a proper and safe pavement? As already demonstrated by the existing pavement, it does not have to be wide and could even just be on one side of the buildings up through the road. The road going between the Walton Antiques building and the old Lloyd's Bank Building is good and vehicles are considerate of people walking there, but a pavement would assist in any safety issue for pedestrians. This would also negate the suggestion of needing a right of way through our 'square'.

There could be a one-way system created to help traffic coming into areas behind the old Lloyd's Bank Building and then at Water Street to facilitate the safety of people, if this is an issue and has created the suggestion for a right of way through our residential area.

The one complainant or interested party, a gentleman, already has two options for cutting across – rather than using the High Street - from where he lives, namely Pennybank Lane and Water Street. Why is it so important for him (only him?) to suddenly want access through our living area when he has a direct route to the High Street to access the shops, pubs, etc? If the Complainant or interested party wants access to Castle Hill and beyond, there is also a route further up the High Street which goes straight across and is better access than coming through to North Road/North Street where there is more of a gradient to get up to Castle Hill.

To my knowledge no-one has visited the site, or ascertained from residents what this proposal would mean to their everyday living.

Yours sincerely



J.D. Ackerman

Harlow, Craig

From: Harlow, Craig
Sent: 29 May 2018 10:41
To: 'Everard D'Silva'
Subject: RE: Applivation for an Order to add a footpath to the definitive map and statement at The Square, Mere
Attachments: SWG New UEF (v.2 Oct 2016).doc

Dear Mr and Mrs D'Silva,

Thank you for your reply to my letter.

This application to add a footpath to the definitive map and statement in Mere will rely upon the evidence that is available to the council before it can make a decision.

It must be demonstrated that the route claimed has been used for a period of 20 years as of right, this means the use has been without permission, secrecy or force for that period. This has to be based upon evidence and any extra information any users of the way can submit to the council will help in reaching a decision. I have attached a user evidence form to this email which is very helpful it gaining the relevant information when considering an application such as this, if you would like to fill out the form and return it to me with a map of the route you have used I would be most grateful.

Regards

Craig

Craig Harlow
 Acting Rights of Way Officer (Definitive Map)
 Rights of Way Warden (North / Central)
 Environment Services
 Wiltshire Council

[Tel:01249 468568](tel:01249468568) / 01225 712810
 Ext:28568
 Mob:07767 670709
 Email: craig.harlow@wiltshire.gov.uk
 Web: www.wiltshire.gov.uk

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From: Everard D'Silva [REDACTED]
Sent: 26 May 2018 15:42
To: Harlow, Craig
Subject: Applivation for an Order to add a footpath to the definitive map and statement at The Square, Mere

Dear Craig Harlow,

Re: Application for an Order to add a footpath to the definitive map and statement at The Square, Mere

Thank you, for your letter dated 23 May 2018, Reference 2018/03.

My wife and I live in Walton Cottage as marked on the map you sent us with your letter. When we were in the process of purchasing Walton Cottage back in the winter of 2016 one of the deciding factors when weighing up whether or not to buy was that we had easy and **safe** access to the High Street via the passage that is the subject of this petition. Our Estate Agent told us that we had that access. Since the gate has been closed we have had to walk round and use Manor Road. There is a very narrow pavement in Manor Road which narrows down to nothing and cars, lorries and heavy goods vehicles use it constantly and anybody walking on Manor Road come within a couple of inches of the vehicles passing by on the narrowed part. At night time this is particularly dangerous and I can tell you that, both, my wife and I have had to be pretty quick to jump out of the way of the vehicles. Now, here, there is a particular problem because my wife is very slow due to a very serious accident (hit and run is not an accident!) many years ago and the doctors said that it is unlikely that she will make a full recovery - she hasn't! (she spent two years in a wheelchair!)

My wife works as a carer in Fives Court Old People's Home in Angel Lane, a very short distance from Walton Cottage but I always walk with her to and from work to ensure her safety. She usually works late shifts (2.30 pm to 10 pm) which means it's dark when I collect her from work. She, also, has very little vision in her right eye (due, again, to her hit and run incident) and does not see traffic approaching from her right. I am trying to reduce the risks as much as I can but I am enraged every time we have to be smart to move out of the way at night because cars and other vehicles expect the pedestrian to get out of the way and have blown their horns at us on a number of occasions.

Incidentally, I must add that, only, yesterday, it so happens, I witnessed a nasty altercation out of our kitchen window when someone threatened a young man whose father had left the gate open. His father is a retired Vicar who lives opposite us and who suffers from Alzheimer's. I was on the verge of calling the Police.

People have been using this passage to the High Street for years and are outraged at it being, all of a sudden, closed off to us.

Therefore, My wife and I are outraged and must protest at this passage being closed.

Thank you,
Yours sincerely,

Mr & Mrs D'Silva
Walton Cottage, Mere

Harlow, Craig

From: Roberts, Ali
Sent: 30 July 2018 10:51
To: Harlow, Craig
Subject: FW: Right of way in Mere

From: Andrew Holder [REDACTED]
Sent: 24 July 2018 11:57
To: rightsofway
Subject: Fwd: Right of way in Mere

I gather that Mr Harlow is on leave at the moment. Please refer this email to the appropriate person.

Thank you
 Andrew Holder

Begin forwarded message:

From: Andrew Holder [REDACTED]
Subject: Right of way in Mere
Date: 24 July 2018 at 11:55:18 BST
To: craig.harlow@wiltshire.gov.uk

Dear Mr Harlow.

Further to my telephone message yesterday, I am the owner of the Brainwave Shop and the building behind it in Mere, Wiltshire, BA12 6DL.

I live in Scotland and, as such, am not quite up to date with local matters in Mere. I gather that there has been a consultation process regarding an application to make a private walkway through our properties into a public right of way.

I gather that one requirement for the creation of a public right of way is that it should have been in unencumbered use for the last 20 years. In fact, it has come to my attention that this has been claimed in a "dossier" of information.

This is absolutely not the case. I bought the property, which was then a disused warehouse, along the West side of the walkway in 2007. I then spent some 4 years renovating it. During this time the passageway was often locked for safety reasons and was also closed off by large wooden doors with an old fashioned system of brackets and wood brace. This effectively barred entry from the road side at nights.

I also put a laminated sign on the iron gates informing that it was private property and entry was restricted. This was in place for at least a year, before it was anonymously removed.

During the period when Lipscombe Builders were renovating the Boardroom property, on the other side of the walkway, the iron gates were usually locked.

The conclusion of this is that for a period of some 5 years, entry was locked for a good proportion of the time.

I look forward to your comments.

Best regards
Andrew Holder



Harlow, Craig

From: Harlow, Craig
Sent: 01 August 2018 09:59
To: 'Andrew Holder'
Subject: RE: Right of Way in Mere

Good Morning Andrew,

Thank you for the email and the photograph, as I say any evidence is always helpful.

It will still be some months before a decision report is finalised, I will keep you informed of any progress.

Regards

Craig

Craig Harlow
Acting Rights of Way Officer (Definitive Map)
Rights of Way Warden (North / Central)
Environment Services
Wiltshire Council

[Tel:01249 468568](tel:01249468568) / 01225 712810
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Web: www.wiltshire.gov.uk

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<http://www.wiltshire.gov.uk/recreation-rights-of-way>"

From: Andrew Holder [REDACTED]
Sent: 01 August 2018 09:44
To: Harlow, Craig
Subject: Re: Right of Way in Mere

Good morning Craig,

Thank you for ringing the other day, it was a very informative conversation.

I have trawled through all my back up disks and have found one photo of the rear entrance, by my property. I have put the date on it. I remember it well because it was just after I had bought the property in August 2007 and the rendering had just been done, although the temperature had plummeted and I was worried about the mortar setting!

You can see the wooden doors, which were usually barred at night by putting a stout piece of wood across the brackets.

This was before any of the alterations were started by Lipscombe builders next door.

I'm afraid I could not find any photos of the Private Property sign I put on the front gate.

Best regards
Andrew Holder



Harlow, Craig

From: Harlow, Craig
Sent: 10 July 2018 13:58
To: 'Gill Main'
Subject: RE: Proposed public right of way, Mere

Dear Ms Main,

Thank you for your email.

I acknowledge your comments and I will keep you informed of any progress on the case.

Regards

Craig Harlow
 Acting Rights of Way Officer (Definitive Map) Rights of Way Warden (North / Central) Environment Services
 Wiltshire Council

Tel:01249 468568 / 01225 712810
 Ext:28568
 Mob:07767 670709
 Email: craig.harlow@wiltshire.gov.uk
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-----Original Message-----

From: Gill Main [REDACTED]
 Sent: 05 July 2018 23:41
 To: Harlow, Craig
 Subject: Proposed public right of way, Mere

Sent from my iPad

Dear Mr Harlow,

I am writing in response to your letter of 23rd May., and wish to object , most strenuously to the current private footpath being adopted as a public right of way.

Listed below are some of the reasons for this objection.

A private footpath crosses the residents' private car park, clearly marked as such, and passes through a quiet residential area. Since the locking of the gate residents have been able to enjoy a peaceful life in their homes free from the following:

Children using the car park as a playground, riding their bicycles, skidding backwards and forwards through the gravel topping.

Youths using the seat in the residents' private garden. They leave behind discarded sandwich packets and unwanted food, cigarette ends and evidence of banned substances.

Dog walkers allowing their pets to use the garden as a toilet.

Drivers disregarding the private car park, residents only, sign and regularly leaving their cars whilst accessing the town via the gates and, on occasion, if asked not to do so, residents being verbally abused.

Men and children riding bicycles down the sloping path and children also constantly using scooters and skate boards. Again, it is not a play area.

Under the archway in front of the gates youths congregate, both day and night. It is intimidating when one has to walk through a group sitting on either side of the archway with their legs stretched across the pathway making fatuous comments. Even more intimidating are the nighttime gatherings when larger groups of teenagers "party". Several residents have asked them to leave at different times, as have I and I can assure you that at 3 a.m. in the morning, exasperated by the noise, I found it a frightening experience.

We have Chinese food + containers, half-eaten hamburgers and chips spread across the floor. Rubbish and cigarette ends are dropped and the walls have been sprayed with fizzy drinks/beer and the bottles or cans are left behind. The painted walls are black with the spray, spoiling the lovely entrance.

I swept the entrance on a daily basis and on numerous occasions took water and bleach to wash the path under the archway where men think it is acceptable to urinate against the walls. One female resident went to collect her post and was confronted by a man urinating in broad daylight.

I removed the bench from outside my front door as men would sit there at night with their cans of beer and use my flower pots as ashtrays. This also happens in the private courtyard in front of the cottage off the path.

Late at night people seem to think it great fun to cut through to North Street whooping and screeching at the tops of their voices.

We have found evidence of drug-taking and sexual activity.

The above problems have now ceased since the locking of the gates.

With regard to the historical evidence of the gate being locked, I think you already have information. However, when the post office and sorting office was situated here, the post mistress at that time informed me that there were double, solid gates as well as the metal ones and the general public did not use the footpath, it was only for the residents of the 3 flats. Her lease expired in 2000. The next owner, Mr. Robert Finan had a chain and padlock and the gates were permanently locked. I understand that was the situation when Mr. Lipscombe purchased the property + a "private property" sign was attached to the gate.

There are several other ways that pedestrians can access the town and there are many roads which do not have pavements. The person asking for the right of way lives at the opposite end of Mere, nowhere near here. I note that in Mere Matters Mr. George Jeans states that if 2 wheelchairs users were to meet in Pennybank Lane they would not be able to pass each other. As one can see both ends of the lane I do not think this problem would arise. Also, this route takes pedestrians to the zebra crossing, safer than through the gates here where there is a blind corner on an often busy road.

I feel that our quality of life in this lovely enclave would be adversely affected again if this proposal goes through and also think that other residents in Mere would be appalled if the above incidents occurred in their part of the town.

I look forward to hearing from you.

Yours faithfully,

Gillian Main

Harlow, Craig

From: Gill Main [REDACTED] >
Sent: 19 July 2018 13:43
To: Harlow, Craig
Subject: Application for an Order to add a footpath to the definitive map and statement at The Square, Mere

Follow Up Flag: Follow up
Flag Status: Flagged

Sent from my iPad

Dear Mr. Harlow,

Further to my recent e-mail re the above proposal, I would like to add the following:

I am in receipt of a copy of the minutes of a meeting of Mere Town Council held on 4th June, 2018 in which Mr. Jeans explained that he had collected quite a dossier on the issue regarding the locking of the gates in The Square. Cllr. Jeans explained that in order to claim a public right of way you need to produce evidence that unobstructed access was available for a 20 year period minimum. Cllr. Jeans says that from 1997 to 2017 the gates were not locked and public access was available.

What concerns me is that the dossier states that Sam Squires was the last person to chain the gates up in 1992. It does not contain information from Mr. Bob Finan, owner Sept. 2004 - 2007 that the gates were locked with a chain and padlock for insurance reasons - access by the public was not covered. Also, Mr. Andrew Lipscombe, owner from 2008 to the present, has not been contacted by Mr. Jeans to ascertain whether the gates have been locked by his company.

I spoke to Mr. Lipscombe who confirmed that when he viewed the property before purchase, Mr. Finan unlocked the gates before he could gain access. He further stated that the gates were locked during renovation work as access was unsafe for the general public due to demolition and building works. All of the above can be confirmed by Mr. Finan and Mr. Lipscombe. Therefore, how can an application be made for a public right of way when the gates have been locked during the past 20 years?

Also, in 2012, I am reliably informed by residents in The Square, that there was a sign attached to the gates stating Private Property. It was later removed by persons unknown.

Yours faithfully,

Gillian Main

Mr. Craig Harlow
Rights of Way Officer
Rights of Way & Countryside Team
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

July 2nd 2018

Stuart May
Flat 3
Walton Building
Mere
Wiltshire
BA12 6HU

Ref: 2018/03

Wildlife and Countryside Act 1981 s.53
Application for an Order to add a footpath to the definitive map and statement at The Square, Mere.

Dear Mr. Harlow,

Thank you for your letter dated June 19th 2018 regarding the above application.
I enclose the completed Landowner evidence form.

I own Flat 3 and the corresponding parking bay both of which are adjacent to this proposed footpath.

I purchased this property in March 2018 and of course I did so with the clear knowledge that this footpath was accessible to residents of this enclosed area only and not a public right of way.
I have been a Mere resident for many years and in fact lived until recently at 15 Castle Hill Crescent which is nearby and in the same direction from the Clock Tower and town centre.

I have never used this footpath route into town before becoming a resident at The Walton building and was never aware of any public access.

On speaking to some of my immediate neighbours it appears that for a time while the development of The Boardroom building was taking place that this walkway was accessible as the gate that exists was, for a period, unlocked.

This accessibility to the public at that time seems to have lead to many instances of anti social behaviour concentrated around the Archway of The Boardroom and the pathway the is adjacent to both The Walton Building and the properties very close to the archway.

These included people using this area to drink alcohol (with the corresponding litter), instances of urination and vomiting, along with general intimidation of residents in this area.

Access in this direction already exists to the area of the Clocktower via Manor Road and dedicated pedestrian access exists via Pennybank Lane which is also very close by.

This route as indicated on the enclosed map by A - B is of course used primarily as a residents car park and in fact my parking bay crosses the route indicated.
Increased pedestrian traffic in this area, beyond the residents that currently use it, where cars are parking and turning seems to pose a risk to people on foot.

Therefore, for the reasons given, I strongly appose the creation of a new public footpath in this area.

Thank you again for your correspondence.

Yours sincerely

A solid black rectangular box used to redact the signature of Stuart May.

Stuart May

LANDOWNER EVIDENCE FORM

The object of this enquiry is to establish whether a Public Right of Way exists. It is important that you answer all the questions accurately and as fully as possible. This is of special importance as the information given may be examined at a Public Inquiry or Hearing.

FULL NAME STUART MAY

ADDRESS FLAT 3, THE WALTOW BUILDING, MERE, BA12 6HU

Tel no (day)

e.mail address

PATH DETAILS:

Parish MERE

Claimed Status of Way

Description of Path (also see attached map)

From: To:

1. The route of the way is shown on the accompanying plan.

Does the route cross or adjoin your land?

YES / NO

If no, no further questions need to be answered.

If yes, please indicate on the plan the position of your land and state the number of years it has been in your ownership 1 or tenancy

2. Do you believe this way to be public? NO

(a) If so, with what status

(b) For how long have you held this belief?

3. Have you seen, or been aware of, members of the public using this way? NO

(a) If so, please state the period, regularity and nature of such use

4. Have you ever required people to ask permission before using the way? NO

If so, please give details

- 5. **Have you deposited a Section 31 (Highways Act 1980) plan and statement?** ~~YES~~ / NO
 If so, please give details and dates
- 6. **Have you, or someone on your behalf, ever turned back or stopped anyone from using the way?** No
 If yes, please give details and appropriate dates
- 7. **Have you, or someone on your behalf, ever told anyone using the way it was not public?** No
 If yes, please give details and appropriate dates
- 8. **Have you ever erected notices or signs stating that the way was not public?** No
 a. If yes, please give details and approximate dates
- b. State whether these notices were ever defaced or destroyed and whether they were replaced.

- c. Show their position on the accompanying plan
- 9. **Have there, to your knowledge, ever been on the way any stiles or gates?** YES / ~~NO~~
 a. If yes, state whether the gate or gates were ever locked YES RESIDENTS HAVE A KEY.
 b. Show their position on the accompanying plan
- 10. **Have you ever obstructed the way?** ONLY BY LOCKING THE GATE.
 a. If yes, state where, how and when
- 11. **Can you give any further information?** Please continue on a separate sheet of paper if needed.

DECLARATION

I hereby certify that, to the best of my knowledge and belief, the information that I have given is true .

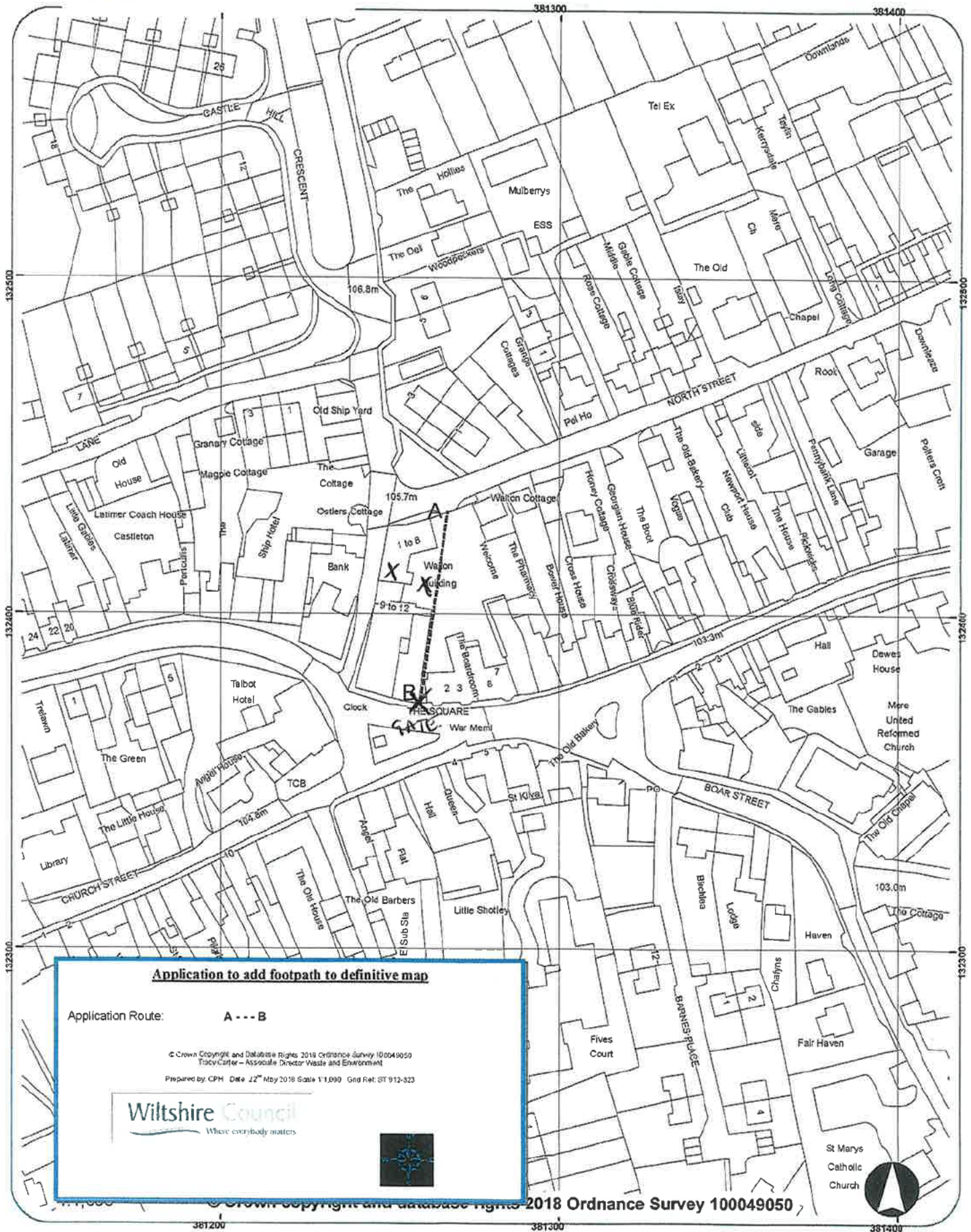
Signed:



Date: 23/6/18.

Please return this form and any accompanying map to:

Rights of Way and Countryside Section,
Waste and Environment
Wiltshire Council
County Hall
Trowbridge
BA14 8JN



Application to add footpath to definitive map

Application Route: **A --- B**

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Tracy Carter - Associate Director Waste and Environment

Prepared by: CPH Date: 12th May 2018 Scale: 1:1,000 Grid Ref: ST 912 323



St Marys
Catholic
Church

Harlow, Craig

From: Lindsey [REDACTED]
Sent: 04 July 2018 10:59
To: Harlow, Craig
Cc: Jeans, George
Subject: Application for an Order to add a footpath to the definitive map and statement at The Square, Mere.

Dear Craig,

Thank you for your letter of 23rd May – (Your ref: 2018/03) and attached plan. I can confirm that this was presented to the Town Council at their June meeting. The simplest way for me to respond is to send you a copy of the approved Minutes as copied below:

b) Application for an Order to add a footpath to the definitive map and statement at The Square, Mere – a copy of a letter from Wiltshire Council’s Rights of Way Officer had been distributed to members with their agenda papers – the letter stated that Wiltshire Council had received an application to add a public footpath to the definitive map and statement leading from The Square in a northerly direction to North Street (plan attached). Wiltshire Council is now placed under a duty to investigate the available evidence to determine, on the balance of probabilities, whether or not a right of way for the public on foot, subsists or can be reasonably alleged to subsist and to amend the definitive map and statement of public rights of way accordingly. Wiltshire Council were inviting the Town Council’s comments on this matter and would be grateful to receive any further evidence regarding public use of the route in question and/or historical evidence of the claimed route.

Cllr. Jeans explained that he had collected quite a dossier on this issue as he had had a large number of people contact him when the gate was locked recently and access was blocked. He pointed out that many people used this path as a safe way of getting from The Square to North Street/Manor Road/North Road as the alternative route, between the old Lloyds Bank and Waltons Antiques buildings, was a single width roadway with no footpath and it was hazardous to walk along here with young children or a pram/pushchair. Cllr. Jeans explained that in order to claim a public right of way you need to produce evidence that unobstructed access was available for a 20 year period minimum. Cllr. Jeans says that from 1997 to 2017 the gates were not locked and public access was available and as far as he is aware people have not been challenged when going through there and there were no signs saying that people were not allowed to go through there. Cllr. Sims said that, many years ago when Mrs. Young had the post office next door, apparently this was a closed off area. Cllr. Jeans confirmed that Mr. Andy Young controlled the building and access on behalf of Mr. Clifford (the owner) until approximately 1989. Sam Squires was the last person to chain the gates up in 1992. After that, people went through there unopposed until the gates were shut in December 2017.

Cllr. P. Coward said that he could not remember it ever being open for public use. Cllr. Mead said that he could not ever remember it being open for public use. Cllr. Norris said that he had used the path within the last 12 years and had not been challenged, although he had not thought of it as a public right of way. Cllr. Sims said that the alleyway was used as a public toilet and a place for people to take drugs. Cllr. R. Coward said that his grandson used it on a regular basis when he gets off the school bus to get to North Street. **RESOLVED** that, should it be legally feasible for this route to be added as a footpath to the definitive map and statement, then it would be welcomed as a safer route for pedestrians to come into town on proposal made by Cllr. Jeans, seconded by Cllr. Mrs. Hurd and carried with a vote of 4 for, 3 against and 5 abstentions.

Lindsey Wood

Town Clerk, Mere
Tel: 01747 860701

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County Hall
Bythesea Road
Trowbridge
BA14 8JN

28th May 2018

Dear Mr Craig Harlow - your ref: 2018/03

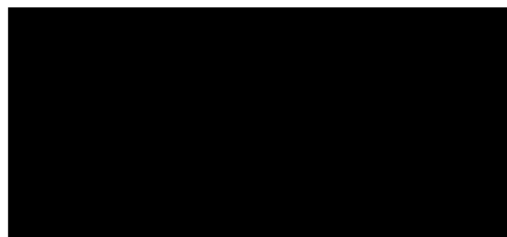
Footpath to the Square - Mere

I have lived in North Street in excess of 42 years and during this time the route has always been available and open until the development of the Walton Buildings. Around a year ago residents of the development have taken into their heads to fit a lock and keep the route closed to all residents North of the Square.

There are many residents similar to myself who have various mobility problems. In my case it is my age (95). It is extremely dangerous for us being forced to use Manor Road as it is narrow, very busy and has no pavements.

Please take the safety aspects into serious consideration along with the already long standing existence of this route when making your final decision.

Yours sincerely



Joyce Moody,
Resident
Rose Cottage
North Street BA12 6HH

Mr C Harlow
Waste and Environment
County Hall
Trowbridge
BA14 8JN

Flat 4, Welcome House
North Street
Mere
Wiltshire
BA12 6HH

11th June 2018

Your Ref: 2018/03

Application to add footpath to the definitive map at The Square, Mere.

Dear Mr Harlow,
In reply to your letter of 23rd May.

I and my fellow residents are firmly against the above proposal to add a public footpath that would go through a private courtyard area and car park.

The path heading North to South, leading onto an extremely busy four road junction, has a downward slope that encourages the local children to use their skateboards and scooters, if the gates at the bottom are left open they could easily lose control and career into the oncoming traffic or collide with a pedestrian.

An accident waiting to happen.

A much safer option is to use the pathway which runs from North Street down Penny Bank Lane which brings you out to the zebra crossing on Salisbury Street or indeed to take the short walk down Manor Road.

The covered archway at the end of the path is used by teenagers as a meeting place late into the night, evidence of the drinking of alcohol and taking of drugs have been found along with a variety of rubbish, the walls and roof of this area are a mess.

They also congregate around the bench located in the gardens of the residents car park, property has been stolen and vehicles vandalised.

This behaviour is very intimidating to everyone and especially to the elder residents of the area. Barry, the gentleman who opens and shuts the doors to the Clocktower every day informs me that since the gates at the bottom of this path have been locked, there is less rubbish to clean up and a general improvement of the area has been noted.

I have spoken with Mr Robert Finan who once owned the properties around the archway area and he has informed me that he always kept the gates padlocked but a gang of drug dealers would use bolt cutters to open them up again in order to deal under cover. Drug dealers are still active in this area.

There was also a second set of gates made of thick, solid wood which were also kept locked and to his knowledge never opened because they were there as added protection for the back door of the Post Office which was then located next to the arch, which is now the charity shop. The hinges of this gate are still there on the wall under the arch.

Mr Finan can be contacted at 07759 422037 or post@stewartfinan.co.uk
He has told me that he is more than willing to help you in any way he can.
After all is considered, I do not think this path has ever been a right of way.

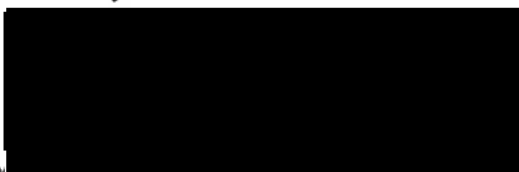
Are you aware that not one resident I have spoken to from Walton Buildings flats 1 to 10, have received your letter?

This is a terrible oversight as the proposed public footpath runs the whole length of that building and the residents should have a chance to put their views forward.

As secretary of the Welcome Flats Residents association, I represent the owners of all five flats in this building and they are all against the proposed path.

I would welcome the chance to discuss this matter in person with you when you make your site inspection visit, which you surely must in order to assess the situation.

Yours Faithfully



Alan Morris
tel: 07710 453516
Secretary, Welcome House Residents Association

Tim Bennett	Flat 1
Samantha Starkie	Flat 2
James Dyke	Flat 3
Julie Ackerman	Flat 5

LIPSCOMBE

BUILDING CONTRACTORS

Registered Office

Lower Langham Barn, Langham Lane, Gillingham, Dorset SP8 5NT

Telephone: (01747) 823599 Fax: (01747) 823591

Email: lipscombe.building.contractors@btconnect.com

28 June 2018

FAO: Mr Craig Harlow
Rights of Way & Countryside Team
Waste and Environment
County Hall
Bythesea Road
TROWBRIDGE
Wiltshire
BA14 8JN

Dear Craig

THE BOARDROOM HOUSE, MERE, WILTSHIRE

Thank you for meeting with me on the 5th June. I hope this gave you the chance to familiarise yourself with the location and the path/courtyard in question.

We most strongly object to our land being added to the definitive map. I would like to question why a councillor would, not only back this application, but also actually try to drum up support with such enthusiasm. We believe that this application is vexatious and a waste of tax payers' money. It will have a detrimental effect on so many people's properties and privacy. Surely councillors should take an unbiased view in this situation? It's absurd to think it's necessary to have three separate routes from North Street to Salisbury Street within a distance of approx. 100 metres.

The applicant has no reason to take this route from his house to The Square – there are several other more direct routes available to him and anybody else. It takes forty extra paces to get from points A to B via Manor Road. There is also a direct route from North Street to Salisbury Street via a foot path called Penny Bank Lane. Anyone living on the Eastern or Western side of Mere can simply walk along Salisbury Street to The Square and use one of the other routes to get to the Northern side of Mere.

We purchased The Boardroom House and land at auction in around 2008. Due diligence and advice from our Solicitors at the time confirmed that the land belonged to us, but that residents of The Old Post Office and The Walton building had a right of way over this land and under our building to the High Street (Point B). There are even covenants in place for the maintenance and up-keep of the path and The Walton building car park. It seems strange that if this application was approved, just a few people would have to pay for the path's up-keep and maintenance for anyone and everyone to use it as they please.

We purchased the building in good faith and subject to the legal advice given. Our original plan was to develop and sell the building. We would not have continued with the purchase had we been advised that a possible public footpath ran straight through our land and under the building. This area now forms a private courtyard for Flats 1-5 and a garden for The Boardroom Cottage. It is used for relaxing, barbeques and is also a secure place for any of our tenants' children to play. Our tenants and the residents of The Old Post Office and Walton building do not benefit from proper gardens, unlike most of the supporters of this application, who probably do. Our path narrows down to about 4ft wide as it goes beneath the building, so if

the application is successful, people would literally be able to walk freely straight through our tenants' courtyard and garden area.

Prior to the auction, I met with the *then* owner, Mr. Robert Finan to view the property. I distinctly remember him unlocking the gate to allow me to view the rear of the building. There were also a pair of substantial wooden doors to the back of the covered area – these doors were bolted shut (see photo). He will confirm this and also the fact that he used to lock the gates and bolt the doors. We are also reliably informed that when The Old Post Office was in use, these doors were permanently locked, albeit some years ago. We locked the gates on and off throughout the two year period of development work. Once complete, we left the gates unlocked but fixed PRIVATE signs to the gates and the fence to the rear. These were torn down (repeatedly) and in less than a week of putting them up. There is also a permanent private sign at the entrance to The Walton building car park for all to see. We believe that anyone using the path had a good idea that it was private land and were just taking a (*not very*) shortcut to the High Street (point B).

Furthermore, whilst the gates were unlocked the 20ft covered path area under the building became a target for vandals. Beer cans were pushed into light fittings, litter left strewn around, and rubbish stuffed into our tenants' letter boxes. We've also had to clean up vomit, urine (and worse). Youths were loitering at all times of day and night causing a nuisance. The councillor or councillors and residents of Mere who are in support of the application, should really ask themselves if they'd like this happening right outside *their* front doors? Also, when the gates were unlocked during wetter weather, up to a dozen people would wait for the bus under our building. Does this mean it should become a designated bus shelter too?! We decided to lock the gates and issue keys to our tenants and other residents who had a legal right of way (approx. 17 keys).

If the application is granted, it will affect the privacy and enjoyment of the amenity area that our tenants now benefit from. As the owners of the building, it will severely affect the saleability, its value and make the properties much less desirable to rent, thus affecting our business financially.

Yours sincerely

MR ANDREW LIPSCOMBE
Joint Managing Director

On behalf of Lipscombe Building Contractors / Lipscombe Developments Ltd

Encs.

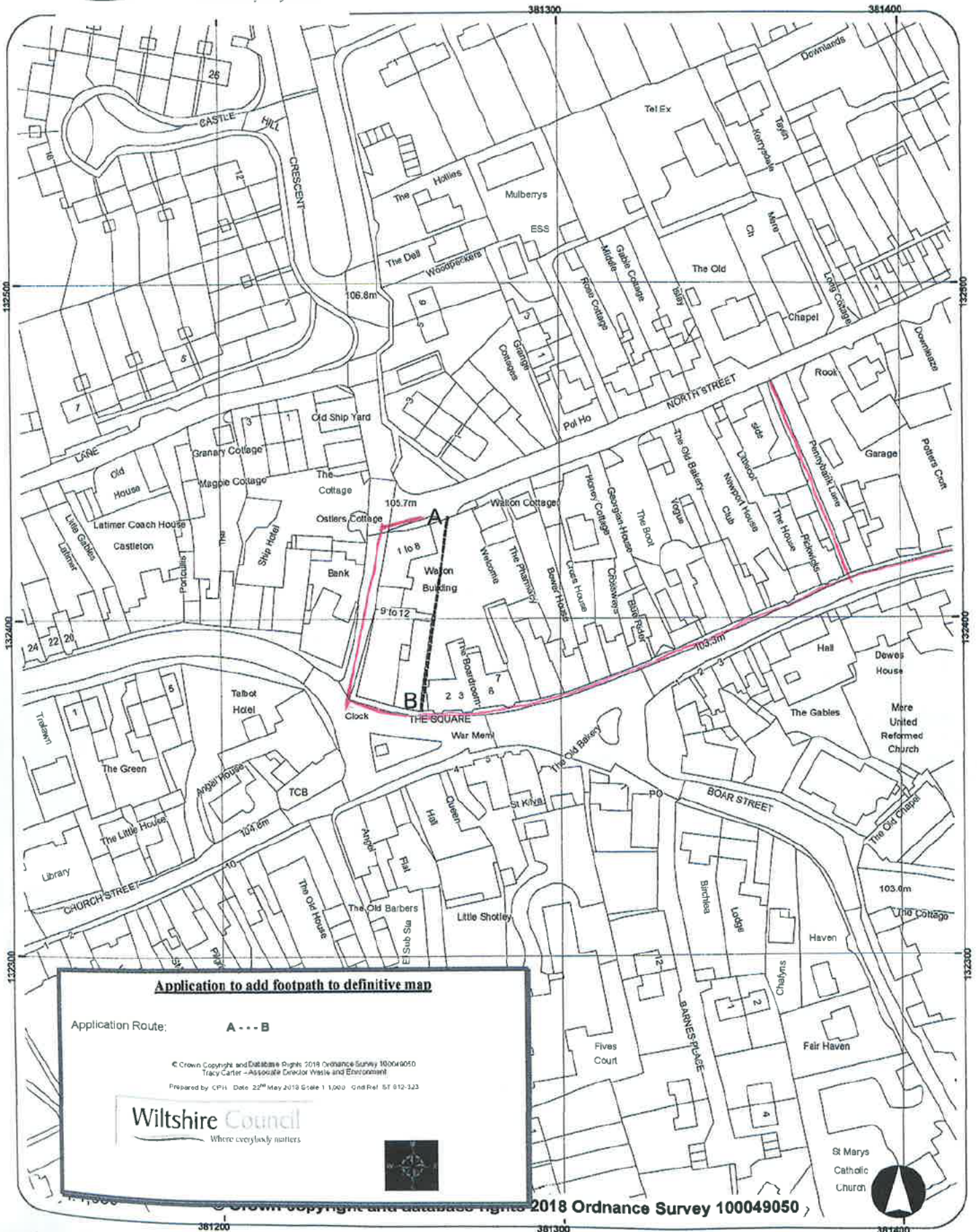
Plan showing alternative routes
Photo of gates with doors visible from front
Photo of doors visible from rear

Also:

Enc: Letter from
The Cottage
tenants.

&

Page 108
Landowner evidence form



Application to add footpath to definitive map

Application Route: **A - - - B**

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Tracy Carter - Associate Director Wiltshire and Environment
Prepared by CPI. Date 22nd May 2018 Scale 1:1,000 Grid Ref 51 912-323



St Marys
Catholic
Church





FRONT VIEW

REAR VIEW



Subject: Boardroom Cottage

From: Jo Oliver [REDACTED]

Date: 30/06/2018 20:55

To: Lipscombe Building Contractors Ltd [REDACTED]

Dear Andrew

It is with regret that we write to give you a months notice on the cottage. We have loved living here and had anticipated on staying long term but we have been given the opportunity of another property with a garden, which for our son Daniel is a much better arrangement.

You have been fantastic landlords and we will be sorry to go. We have to say that the prospect of the path becoming public, which we hope does not happen, but the lack of co operation from other neighbours who have a key to the gate but choose to not use it has really helped sway our decision. I (JO) has had crossed words with one of the neighbours about her constant need to not only leave it unlocked but to leave it wide open. I have explained to her and her husband that for us, not only have we encountered unsociable behaviour late at night, when it has been left unlocked, but also that Dan is under threat from "strangers" and also the main road. They seem to not care whatsoever about this and persist in leaving it open.

I have emailed Wiltshire council to argue several points as to why it should remain locked and we hope that this helps your case.

We hope you understand our decision, its a beautiful cottage and its been a joy, any guests that we have had visit have also said how lovely it is.

If you could let us know what leaving date we have as the house we are taking is available as soon as we are. Also if we owe anything in terms of rent.

As a separate note, you may have noticed that we had the electric "log burner" installed in the lounge, we don't need it where we are going and wondered if you would be interested in purchasing it from us as it does look really nice (well we thought so!) and is a feature for the room. No worries if you don't we can take it out and selleit, its fine. Just thought we would ask.

Kind regards and we look forward to hearing from you.

Many thanks again

Jo and Simon

Recent email from
the current tenants in
The Cottage.
See highlighted text
for relevant information.

Wiltshire Council


Where everybody matters


LANDOWNER EVIDENCE FORM

The object of this enquiry is to establish whether a Public Right of Way exists. It is important that you answer all the questions accurately and as fully as possible. This is of special importance as the information given may be examined at a Public Inquiry or Hearing.

FULL NAME ANDREW JOHN LIPSCOMBE

ADDRESS LOWER LANGHAM BARN

Tel no (day) 

e.mail address 

PATH DETAILS:

Parish MERE, WILTSHIRE

Claimed Status of Way PRIVATE

Description of Path (also see attached map)

From: NORTH STREET To: SALISBURY STREET

1. The route of the way is shown on the accompanying plan.

Does the route cross or adjoin your land?

YES / NO

If no, no further questions need to be answered.

If yes, please indicate on the plan the position of your land and state the number of years it has been in your ownership APPROX. 10 YEARS or tenancy N/A

2. Do you believe this way to be public? NO

(a) If so, with what status

(b) For how long have you held this belief? SINCE PURCHASING + BEFORE

3. Have you seen, or been aware of, members of the public using this way?

(a) If so, please state the period, regularity and nature of such use YES, WHEN THE GATE IS UNLOCKED. TOO OFTEN

4. Have you ever required people to ask permission before using the way?

If so, please give details NO

Have you deposited a Section 31 (Highways Act 1980) plan and statement? YES / NO

If so, please give details and dates N/A

6. Have you, or someone on your behalf, ever turned back or stopped anyone from using the way?

If yes, please give details and appropriate dates YES - MANY TIMES I'VE TOLD

PEOPLE IT IS PRIVATE INCLUDING THE BUS LOADS OF SCHOOL CHILDREN THAT CUT THROUGH TWICE A DAY.

7. Have you, or someone on your behalf, ever told anyone using the way it was not public?

If yes, please give details and appropriate dates YES, AS ABOVE

8. Have you ever erected notices or signs stating that the way was not public?

a. If yes, please give details and approximate dates YES, PRIVATE SIGNS

ON SEVERAL OCCASIONS OVER THE LAST 10 YEARS

b. State whether these notices were ever defaced or destroyed and whether they were replaced.

YES AND YES

c. Show their position on the accompanying plan (ONE ON GATES, ONE ON REAR FENCE)

9. Have there, to your knowledge, ever been on the way any stiles or gates? YES NO

a. If yes, state whether the gate or gates were ever locked YES, GATES + DOORS

b. Show their position on the accompanying plan SEE PHOTOS

10. Have you ever obstructed the way?

a. If yes, state where, how and when YES BY CARRYING OUT BUILDING WORKS

11. Can you give any further information? Please continue on a separate sheet of paper if needed.

SEE ENCLOSED LETTER.

DECLARATION

I hereby certify that, to the best of my knowledge and belief, the information that I have given is true.

Signed: 

Date: 28/06/2018

Please return this form and any accompanying map to:

Rights of Way and Countryside Section,

Waste and Environment

Wiltshire Council

County Hall

Trowbridge

BA14 8JN

Harlow, Craig

From: Jo Oliver [REDACTED] >
Sent: 25 June 2018 10:18
To: Harlow, Craig
Subject: Application for an Order to add a footpath from The Square to North Street, Mere. BA12

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mr Harlow

Further to your letter dated 23 May 2018 regarding the application for the private path leading from the private car park of the Boardroom Apartments to The Square in Mere, we are writing to state that we as residents of Boardroom Cottage strongly object to such an application.

First of all when we moved into the property we were advised by the letting agent that the gate would be locked and the courtyard directly outside our cottage, where the path runs through was to be private. We have a 6 year old who plays in the courtyard, if the pathway and gate were to be made public and the gate unlocked, I would not feel that this was a safe and secure environment for him to play out. This is the only outside space that he has. Suitable alternative properties in Mere are few and far between, as I do not drive and our son attends Mere School, we would be most worried should this gate become accessible to all.

Secondly, last summer when the gate was unlocked we were woken on several occasions by local teenagers, congregating in the archway by the gate, drinking, smoking and basically having a little party. This happened on more than one occasion, at 12 am, 2am etc on different occasions. We find this absolutely unacceptable. As did one of our neighbours who had to go down in her pyjamas and ask them to move on. If the gate became accessible again and this behaviour occurred, I would call the police to move them on, what a complete waste of police time, yes I agree, but I do not see why myself or my partner, or anyone else for that matter should have to police the area at night to prevent anti social behaviour.

Thirdly, the mess that is left by passers by, since the gate has been locked, my neighbours and I have created a lovely Courtyard area for the small community to enjoy who live at the Boardroom and neighbouring properties. There has previously been Chinese take away remnants, fish and chip wrappers, Urine, cigarette ends, used Condoms left under the archway. Most unpleasant for everyone.

The point is that unfortunately in the 21st Century it would be lovely to open the gate and let people walk through, however people cannot be trusted (serious concern for my son and strangers) to keep their surroundings tidy and be considerate. We no longer live in the bygone era of leaving your door unlocked and everyone looks out for each other, and cares about their environment, these days are long gone sadly. Why should we suffer from rubbish and noise and anti social behaviour, we pay our council tax just like anyone else who is lucky enough to be able to afford a property with a private garden.

There are alternative access points to North Street from The Square, Manor Road, Pennybank Lane and Upper water street.

I also don't see how it is fair that a person who lives completely the other end of the town, who would not need access to the path to go to the Square (or anywhere else in the town tbh) should have the right to request such a path when it has absolutely no bearing on them whatsoever. They would be going out of their way if they were to use the path, regardless of where they were going. Just a case of bloody mindedness.

Perhaps it was unlocked previously, but if that was the case this property was uninhabitable due to being derelict. The noise, mess etc would not have bothered any residents as no one lived here. Our landlord has taken the arduous task of restoring this building, yes it is an investment for him, however there would have been lots of easier investments to make, other than a listed building. We want to keep this place beautiful, if it is a public right of way it will be a fruitless task as without us and another neighbour, the rubbish will pile up and the small area will become a den for bored teenagers to congregate and people to stop to relive themselves at the pub closing time.

Someone left the gate unlocked the week before last, we had to endure two men at 12am, smoking and chatting outside our window, on a weekday. Then two days after that again it had been left unlocked and around 11.30 pm, a small group of lads came through cheering and clapping, We were asleep and woken up on both occasions. This is just two occasions whereby it has been left unlocked and by chance people have sought to use it as a short cut to get home, probably from the pub I would image at that time of night. The shape of things to come, we fear, if it becomes a footpath. We cannot live like the, being woken and disturbed, we have to get up at 6am for work. My son is 6 and needs to sleep.

We feel very strongly about this. and trust you understand from the content of this email the problems such a request would cause.

Yours faithfully

Jo Oliver and Simon Richards
Boardroom Cottage, Mere.

GILYARD
SCARTH
LETTINGS

The Old Coffee Tavern
Salisbury Street **MERE**
Wiltshire BA12 6HA
Telephone 01747 860372
Fax 01747 861120

mere@gilyards.co.uk
www.gilyardscarth.co.uk



Mr C Harlow
Rights of Way & Countryside Team
Waste and Environment
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Wednesday, 18 July 2018

Dear Craig

Re: Application for an Order to add a footpath to the definitive map and statement at The Square, Mere.

Please find enclosed the Landowner Evidence form completed on behalf of The Walton Building Management Company who are the management company/freeholder for Flats 1 to 8 The Walton Building, North Street, Mere, Wiltshire, BA12 6HU. I have also attached a plan of the land that is owned by The Walton Building Management Company.

I forwarded your letter to the members of The Walton Building Management Company and asked for responses in order that I could co-ordinate a single response to yourself.

In addition to the completed form, the Directors would like me to add:-

We would like to contest the right of way as it is through private property. Prior to the gate being locked there had been low level vandalism and noise issues. Alternative routes from North Street to The Square via the road or Pennybank Lane are well established and authorised routes.

Yours sincerely



Saffron Reilly-Stitt
Gilyard Scarth Lettings

Associated offices

The Old Cycle Shop, Long St
SHERBORNE, Dorset DT9 3BS
Tel 01935 817360 Fax 01935 817354
sherborne@gilyards.co.uk

The Old Wine Merchants, 25 High St
SHAFTESBURY, Dorset SP7 7JE
Tel 01747 851113 Fax 01747 851113
shaftesbury@gilyards.co.uk

The Old Pine Shop, High St
GILLINGHAM, Dorset SP8 4QT
Tel 01747 825533 Fax 01747 826000
gillingham@gilyards.co.uk

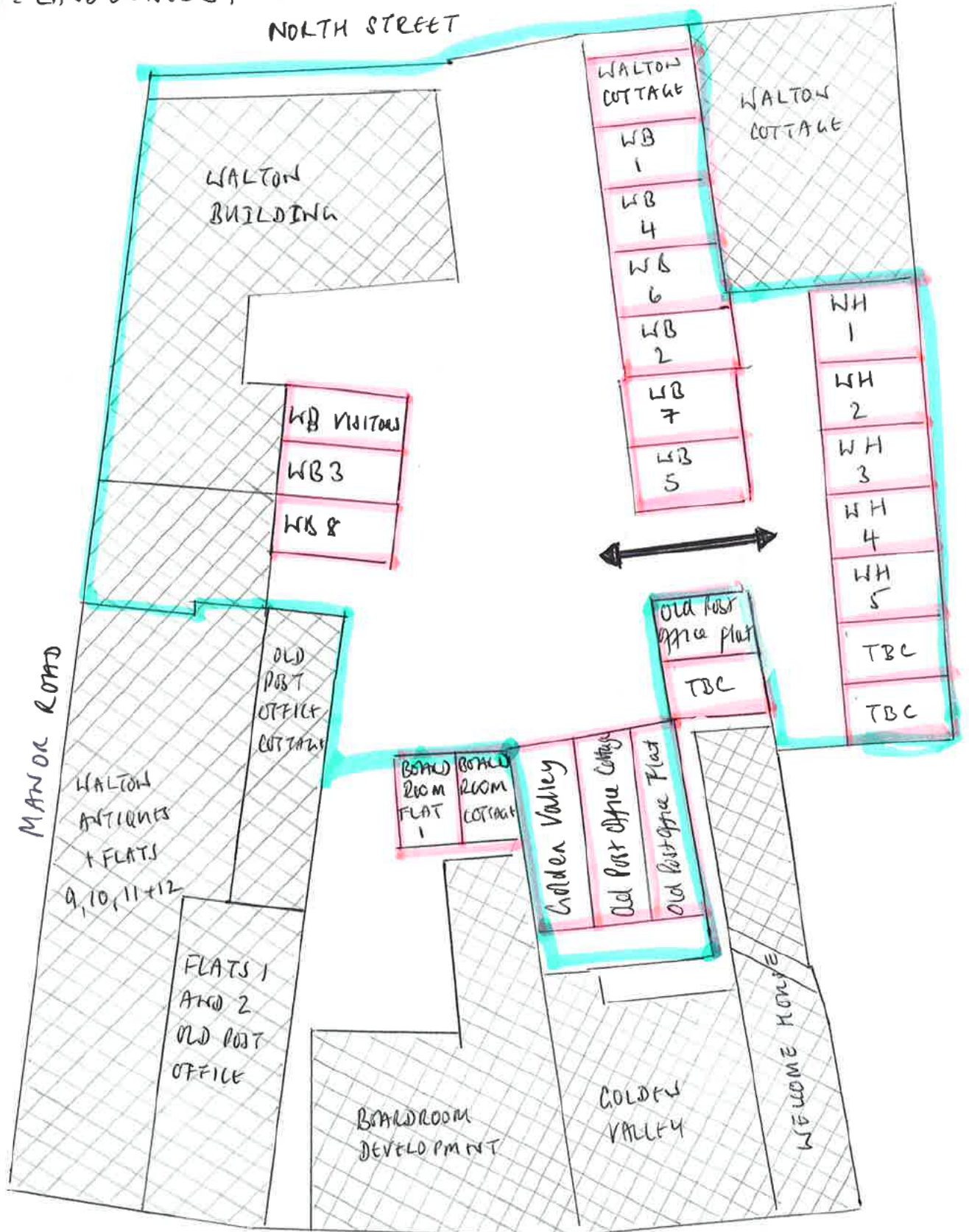
THE WALTON BUILDING CAR PARK

WB = WALTON BUILDING FLATS 1-8

WH = WELCOME HOUSE

TBC = TO BE CONFIRMED

 = LAND OWNED BY THE WALTON BUILDING MANAGEMENT CO



LANDOWNER EVIDENCE FORM

The object of this enquiry is to establish whether a Public Right of Way exists. It is important that you answer all the questions accurately and as fully as possible. This is of special importance as the information given may be examined at a Public Inquiry or Hearing.

FULL NAME THE WALTON BUILDING MANAGEMENT COMPANY

ADDRESS C/O WILYARD SCARTEH LETTING, THE OLD COFFEE TANK / SPURRING STREET, MERE, WILTSHIRE, BA12 6HA

Tel no (day)

e.mail address

PATH DETAILS:

Parish Wiltshire - Mere

Claimed Status of Way

Description of Path (also see attached map)

From: THE SQUARE **To:** NORTH STREET

1. **The route of the way is shown on the accompanying plan.**

Does the route cross or adjoin your land?

YES NO

If no, no further questions need to be answered.

If yes, please indicate on the plan the position of your land and state the number of years it has been in your ownership or tenancy

2. **Do you believe this way to be public?** NO

(a) *If so, with what status*

(b) *For how long have you held this belief?*

3. **Have you seen, or been aware of, members of the public using this way?**

(a) *If so, please state the period, regularity and nature of such use* DAILY

4. **Have you ever required people to ask permission before using the way?**

If so, please give details NO

5. **Have you deposited a Section 31 (Highways Act 1980) plan and statement?** YES/NO (NO circled)
 If so, please give details and dates
6. **Have you, or someone on your behalf, ever turned back or stopped anyone from using the way?**
 If yes, please give details and appropriate dates No
7. **Have you, or someone on your behalf, ever told anyone using the way it was not public?**
 If yes, please give details and appropriate dates No
8. **Have you ever erected notices or signs stating that the way was not public?**
 a. If yes, please give details and approximate dates No
 b. State whether these notices were ever defaced or destroyed and whether they were replaced.
 c. Show their position on the accompanying plan
9. **Have there, to your knowledge, ever been on the way any stiles or gates?** YES/NO (YES circled)
 a. If yes, state whether the gate or gates were ever locked located at 'B'. unsure if they have been locked or not
 b. Show their position on the accompanying plan
10. **Have you ever obstructed the way?**
 a. If yes, state where, how and when No
11. **Can you give any further information?** Please continue on a separate sheet of paper if needed.

DECLARATION

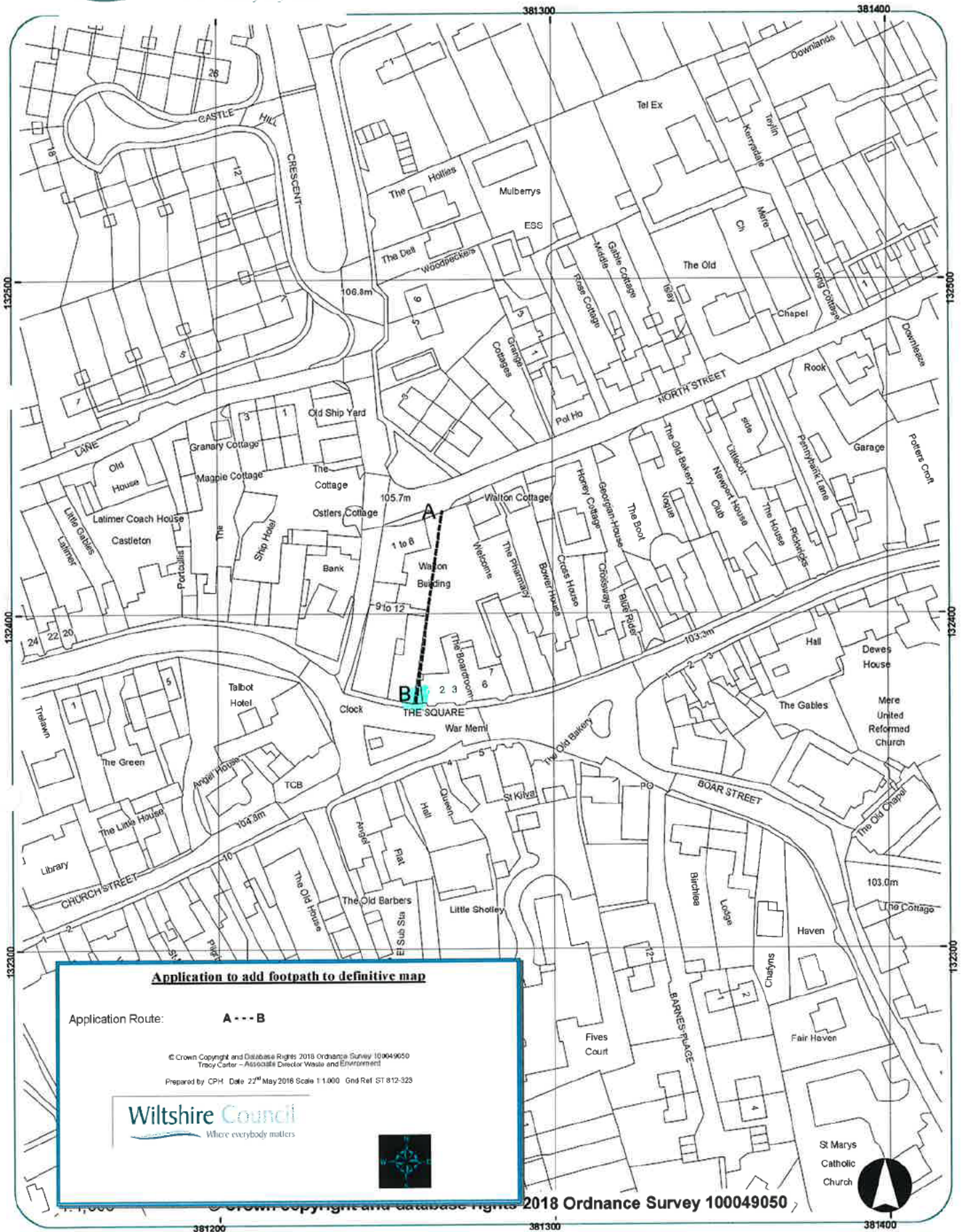
I hereby certify that, to the best of my knowledge and belief, the information that I have given is true .

Signed: 

Date: 17/7/18

Please return this form and any accompanying map to:

**Rights of Way and Countryside Section,
 Waste and Environment
 Wiltshire Council
 County Hall
 Trowbridge
 BA14 8JN**



Mr P. CRUMP
 Flat 4 The Boardroom
 The Square
 MERE
 Wiltshire
 BA12 6DH,

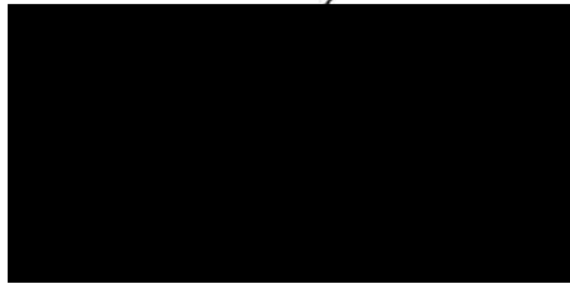
Dear Sir,

I am writing to you
 to protest most strongly about
 the footpath application, wildlife
 and countryside Act 1981 s.53 to
 add Public footpath that goes
 through the above address,
 This will lead to the most
 anti social Behaviour to all
 living at and around this area!
 People parking who do not live here!
 children playing in car park!
 People Drug taking!
 late night noise! from Drunken
 People late at night!
 littering! Noise!
 Lack of respect for residents late
 at night!
 Vandalism to cars and property!

I Had to cut a padlock off
the gates a couple of weeks
ago, where people thought they
can vandalize the gate to keep
it open,

I Dearly Hope That the Peace
and quiet of the residents will
Be repeated!

Yours faithfully



This page is intentionally left blank

01747 860950

1 Boar St
Mere
Wiltshire
BA1 26DD

25th September 2018

Ref:- 2018/03

Dear Mr Harlow,

Firstly can I apologise for the delay, I had been away and also have been trying to get my printer mended or connected. As you can see to no avail.

The "Footpath" in question was never a passage. Originally there was a garden at the rear of the property and was converted to a car park in the 1970's for the use of 'Welcomehouse', what is now the Chinese Takeaway, Flats 2+3, and Walters Building.

My family lived in Flat 3 until 1989, and it was then let to tenants.

I have enclosed a summary minute of "Walters of Mere" property back to Mr Clifford who then developed the main building into flats.

There were two wooden gates one behind the Iron ones in the square and one at the end of the yard to maintain privacy.

I have seen a chain around the Iron gates since we gave up the lease but as I have never been through (no need to) maybe when the

Lipscombe Builders were developing the Boardroom House. I could not be sure.

I would be very happy to meet up if you wish, but the Lipscombe Brothers would be your best bet.

Hope this was some help



Jean Young

P.S. Have marked in red where the fence was. Near B.

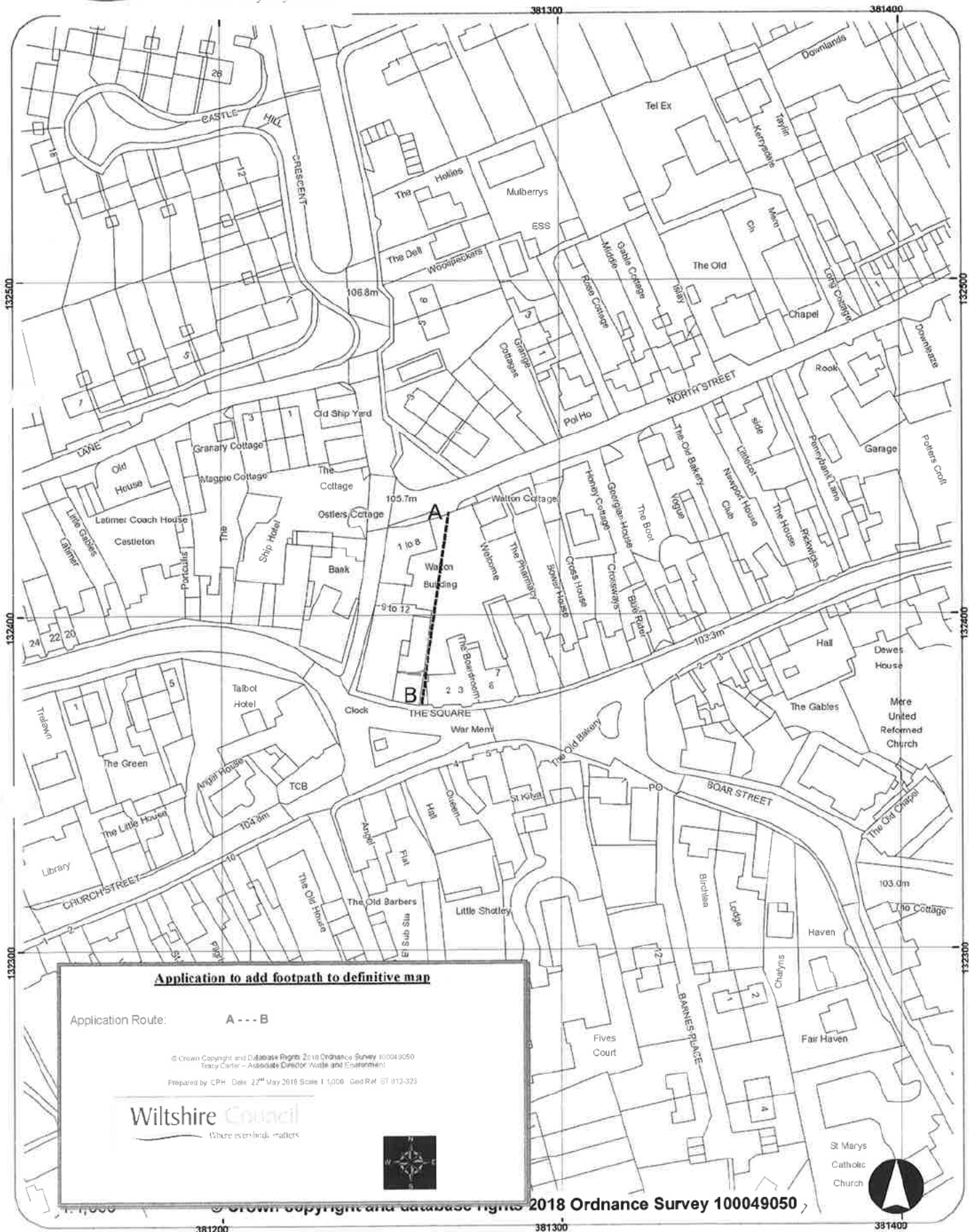
Oliver Clifford

B/MOUTH

Wiltshire Council

Where everybody matters

Application to add footpath to definitive map - Mere



Application to add footpath to definitive map

Application Route: A --- B

© Crown Copyright and Database Rights 2018 Ordnance Survey 100049050
Tracy Carter - Associate Director Waste and Environment
Prepared by CPH Date 22nd May 2018 Scale 1:1000 Grid Ref ST 812-323

Wiltshire Council
Where everybody matters



John Walton & Co Ltd
Minutes of a Board Meeting
held on the 17th March 1999.

Present Mr J.B.Jacob.
 Mr A.G.Young.

Minute No 77.

Auditors and Accounts for years to 31/3/97 and 31/3/98.

Mr Young reported on his continuing efforts to persuade Mr Whittington of Messrs Brend & Lee to produce our audited accounts for the years to 31/3/97 and 31/3/98. Despite a persistent sequence of telephone calls and letters on the part of Mr Young and a succession of promises from Mr Whittington nothing had been forthcoming even after Mr Whittington's recent visit to Mere. Our first correspondence on this subject with Mr Whittington was dated 26th November 1997.

The Inland Revenue had now asked Mr Young to prepare accounts without an auditors report for their use and this he had done. The Board considered them and agreed that they should be signed by Mr Young as a true and fair record of the trading in the years in question.

Mr Young also said that following a succession of letters from the Companies Registry about non-submission of accounts - all of which had been passed to Mr Whittington without response - he proposed to get in touch with the Registry to ask if they would accept the unaudited accounts which he had prepared. This course of action was approved.

Minute No 78.

Main Building Lease.

Mr Young reported that he had had discussions with our head landlord - Mr Clifford - about the lease of the main building in The Square which was due to come to an end in March 2000.

Mr Clifford had offered to accept the surrender of our lease as at 1st April 1999 without any question of repairs or decoration which might otherwise be due at the end of the lease.

Mr Young felt that this would be advantageous to us because:-

- a) The repair cost might be considerable and
- b) We would avoid negotiations with our tenants about possible renewal of their leases and they would be able to deal direct with the head landlord.
- c) We would reduce our potential legal expenses considerably.

d) We would be diverting our management attention diverted to non-trading activities at a time when this should be fully engaged in trading (see Minute No 79 below).

Wiltshire Council

Where everybody matters

LANDOWNER EVIDENCE FORM

The object of this enquiry is to establish whether a Public Right of Way exists. It is important that you answer all the questions accurately and as fully as possible. This is of special importance as the information given may be examined at a Public Inquiry or Hearing.

FULL NAME ROBERT FINAN
 ADDRESS Rook HAYES, NORTH STREET, MERE. BA12 6NH
 Tel no (day) Tel no (eve) 07759 422023
 e.mail address post@RobertFinan.co.uk
 PATH DETAILS:

Parish Mere
 Claimed Status of Way Footpath
 Description of Path (also see attached map)

From: The Square, Mere To: North Street, Mere
 1. The route of the way is shown on the accompanying plan.

Does the route cross or adjoin your land?

YES NO

If no, no further questions need to be answered.

If yes, please indicate on the plan the position of your land and state the number of years it has been in your ownership or tenancy

2. Do you believe this way to be public?

(a) If so, with what status No
 (b) For how long have you held this belief? Always
 3. Have you seen, or been aware of, members of the public using this way?

(a) If so, please state the period, regularity and nature of such use didn't see anyone using the path
 4. Have you ever required people to ask permission before using the way?

If so, please give details Brainware charity - told them no.

5. **Have you deposited a Section 31 (Highways Act 1980) plan and statement?** YES (NO)
 If so, please give details and dates
6. **Have you, or someone on your behalf, ever turned back or stopped anyone from using the way?**
 If yes, please give details and appropriate dates Yes on numerous occasions.
 (bought in Sept 04 - 07)
7. **Have you, or someone on your behalf, ever told anyone using the way it was not public?**
 If yes, please give details and appropriate dates Always told people it
 was not public.
8. **Have you ever erected notices or signs stating that the way was not public?**
 a. If yes, please give details and approximate dates No

 b. State whether these notices were ever defaced or destroyed and whether they were replaced.

 c. Show their position on the accompanying plan
9. **Have there, to your knowledge, ever been on the way any stiles or gates?** (YES) / NO
 a. If yes, state whether the gate or gates were ever locked blacked door ^{1 gate} locked braced if not
 locked.
 b. Show their position on the accompanying plan
10. **Have you ever obstructed the way?**
 a. If yes, state where, how and when Gates were locked, padlock removed 3 times.
 by me
11. **Can you give any further information?** Please continue on a separate sheet of paper if needed.

DECLARATION

I hereby certify that, to the best of my knowledge and belief, the information that I have given is true .

Signed: 

Date: 7/9/2018

Please return this form and any accompanying map to:

Rights of Way and Countryside Section, Waste and Environment , Wiltshire Council, County Hall, Trowbridge, BA14 8JN

Information relating to how Wiltshire Council will manage your data can be found at:
<http://www.wiltshire.gov.uk/recreation-rights-of-way>

Harlow, Craig

From: Margaret Durkee <[REDACTED]>
Sent: 28 January 2019 10:21
To: Harlow, Craig
Subject: ref; 2018/03 Footpath in the Square, Mere

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Sir, Our house is directly opposite the gates in the archway, we have only very rarely used the path to access North Street, but since moving here in 1975 I cannot remember the gates ever being locked (until recently), though it is possible if I was not using the entrance I may not have noticed. I have no knowledge of wooden gates or what was there before 1975.

Yours Mr and Mrs M Durkee, 4,The Square, Mere.

Annie Cottage
North St.

Your ref.
2018/03

Mere
Wiltshire

1-2-2019

Dear Sir,

With reference your letter of January 22nd, I have lived in Mere since the early seventies and have no recollection of locked or braced gates between the square & North St. in Mere. In the 80's my daughter lived in a flat, above the shops, overlooking the ground in question & has no recollection of gardens and certainly had no key to the gates which was residents access to the square. May I point out

How important this access is to the residents in North St. & beyond many of which are elderly people with walking aids (such as myself) and young mothers with prams & small children. There are two alternative routes to the Square - one up Manor Road which is extremely narrow with a narrow pavement which runs out half way up the road. This road is used regularly with tractors, lorries & ~~some~~ since much housing developing, many cars. Only the other day I was using this way home from the shops when a tractor came up behind me - with no room to pass me he had to follow me at walking pace when a car came around the corner

from the other direction & I was stuck in the middle while they sorted it out and at 91 years old I was really stressed. The other route to the shops is by Penny bank lane which again is very narrow and would be impossible for two prams or walking aids to pass. This route is also a fair bit longer walk for people such as myself with walking difficulties.

I hope this will help you to make a favourable decision.

Yours truly

B. Ingram (Mrs)

22nd January 2019

Mr and Mrs Johnson
10 Denes Avenue
Mere
Wiltshire
BA12 6HW

Rights of Way & Countryside Team
Waste and Environment
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Our ref:2018/03

Dear Mr and Mrs Johnson

Wildlife and Countryside Act 1981 s.53

Application for an Order to add a footpath to the definitive map and statement at The Square, Mere

I am writing to you in reference to the user evidence form you have filled out and submitted in regards to the footpath claim in Mere linking The Square and North Street.

As part of the council's investigation into this application, evidence has come to our attention that contradicts your own given evidence.

It is our duty to investigate all evidence and get to the truth of the matter to the best of our ability before making a decision to make an order to record a public footpath or not.

The evidence which has come to our attention states the route was blocked, at various times, by either locked metal gates or braced large wooden gates at The Street end of the path by the road, the locking/bracing of the gates being consistent at night and at times during the day. The years in which it has been claimed the gates were locked or braced at different times cover the periods 1979-1985 and 2003-2010. It has also come to our attention the nature of the path / alley changed significantly in the 1970s and before this period it was private gardens and would not have been useable by the public.

I would appreciate your response to the above statements in relation to your given evidence; do you have any knowledge of the route being blocked by gates of any kind? Did you ever come across locked or braced gates when trying to use the route? If you used the path before the mid/early 1970s what are your memories of the nature/ route of the path used, did it look similar to now or has it significantly changed? Or if you have any further information you feel would be helpful in addition to the evidence or statement you have already provided I would be pleased to receive this.

If the council do make an order to record a public footpath it is likely it will result in a public inquiry where the success of any order would be reliant on your evidence being cross-examined by an inspector appointed by The Planning Inspectorate and/ or a barrister appointed by objectors.

Please reply to this letter with your comments as soon as possible and in any case by the 8th February 2019. I have enclosed a pre-paid envelope for your use and alternatively my contact details are below on which I can be contacted by email or phone to discuss the above.

Enclosed: Map of the area for any annotation you may wish to make.

Yours sincerely

Craig Harlow
Rights of Way Officer



Direct line: 01249 468568
Email: craig.harlow@wiltshire.gov.uk

Myself and my wife have never been approached when we have used the footpath over a very long time as far as we can remember.

Harlow, Craig

From: [REDACTED]
Sent: 29 January 2019 09:42
To: Harlow, Craig
Subject: Your letter Ref:2018/03
Attachments: Scan_0032.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Good morning Mr Harlow

Thank you for your letter. Really not sure what you mean by your second paragraph regarding my evidence, perhaps you would supply me with a copy.

I only moved into Mere in February 2013 and at that time there were metal gates in position which to my recollection were always open. Again, to my recollection things changed about 18-24 months ago when the gates were locked and the residents of The Boardroom etc were issued with keys.

People now have to negotiate the very narrow road between the old bank and the antiques shop to reach North Street etc. This can be quite an ordeal for the elderly etc.

I hope this helps.

Yours sincerely

Chris Breckell

22nd January 2019

Mr Nelson
10 Lynch Close
Mere
Wiltshire
BA12 6EL

Rights of Way & Countryside Team
Waste and Environment
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Our ref:2018/03

Dear Mr Nelson

Wildlife and Countryside Act 1981 s.53

Application for an Order to add a footpath to the definitive map and statement at The Square, Mere

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Yours sincerely

Craig Harlow
Rights of Way Officer



Direct line: 01249 468568
Email: craig.harlow@wiltshire.gov.uk

DURING

LATE 80s 90s + 2011 ONWARDS
UNTIL GATES LOCKED RECENT YEARS
HARD TO REMEMBER EXACT TIMES
BUT DID WALK THROUGH TO
TOWN, ALLEYWAY WAS EASY WAY
TO GO AND SAFER WAY.



R WELSON
10 LYNN CLOSE
MERE

FORMERLY AT 3 MANOR RD
1980 - 2017

Harlow, Craig

From: MICHAEL TAYLOR <[REDACTED]>
Sent: 08 February 2019 11:46
To: Harlow, Craig
Subject: your ref: 2018/03

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Sir,

Thank you for your letter dated 22nd January 2019 relating to the proposed footpath at The Square in Mere. I note the comments within and would make the following comments. For the period 2003-2010, I am not really at liberty to comment as to whether the gates were locked or braced as I had moved out of Mere by that time. Whenever I did visit Mere during that period, I do not recall noticing gates one way or the other. Regarding the period 1979-1985, to my knowledge, I don't recall the gates being locked at any time that I would have attempted to pass through them.

However that is not to say they could have been closed at some time. Having been born and brought up in Mere, I am only too aware of the proclivities of local people and how these may impact on their attitudes towards people not born locally. If I may give an example. I recall walking my dog off the lead, across the fields in The Meads in the early seventies, freely wandering off the footpaths and meeting the local farmer. He was more than happy for me to do so. I went to school with his children, he knew my parents, he had seen me grow up, I was a "local", However that same farmer would angrily chastise any dog walker, male or female, old or young, who was not a "local" who did not have their dog on a lead and who did not stick strictly to the footpaths.

I am only too aware that this application is like walking through the proverbial "minefield". Memories, interpretations, local-ism etc, can and will play a part in applications such as this. I hope my comments have been helpful.

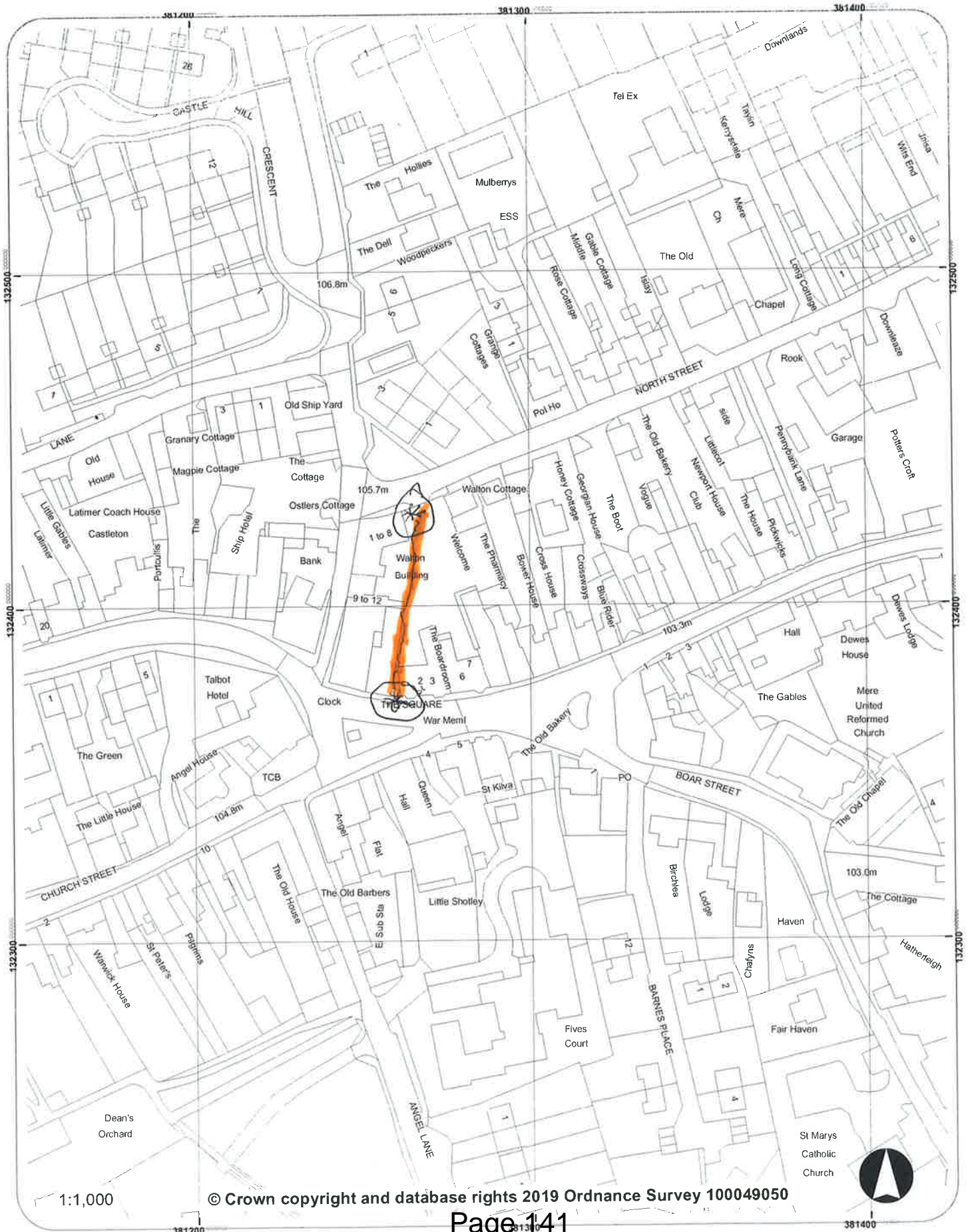
Yours

Mike Taylor

Mrs Adams (CH)

Wiltshire Council
Where everybody matters

Application to add footpath to definitive map - Mere



3 Castle Hill Crescent
or Lane

Mere.

Dear Mr Harlow,

with reference to your
letter re the footpath.

I only moved to Mere in 2009

- August - but have to say that there
were never any locked gates until
very recently when the lock was put on
the gates.

It seems that some people ^{now} have a
key to the gates.

I must reiterate that people with push-chairs
and people in invalid carriages are at a
great disadvantage and other people find
it very difficult to reach the centre of Mere
since the road to the clock tower is only
wide enough for one vehicle until after
the Ostlers Cottage is past.

Yours sincerely

ROSE COTTAGE
NORTH ST.
MERE, WILTS.
BA12 6HH

01/02/2019

Dear Craig Harlow,

In answer to your recent letter 22/01/2019, I have no knowledge of locked metal gates or braced wooden gates. I'm afraid I have no more information than I have already given. I am missing this footpath very much so I do hope the council can find a solution soon. I do have a suggestion that may help, and that is to lock the gate at night and leave open during the day i.e. - between 9am and 5pm.

ROSE COTTAGE
NORTH ST
MERE
BA12 6HH
1-2-19

Dear Sir

In regards to the footpath linking
The Square to North Street there is know
more I can say, only that I have been
using this since 1999, and since the
flats have been there, the gate is only
open when perhaps someone forgets to
lock it, which is very useful for me

yours sincerely

Mrs Rainforth

PAT & JENNY SEWARD
 OLD FORGE
 NORTH STREET.
 MERE
 BRIZ 6NH

Dear Sirs.

We can only refer to the period after 1979-1985- and from memory there was only a very short time when the gate was padlocked with a chain, but was removed, after protest, to our memory there ^{always been} has a good footpath.

We are both in our eighties and find the road between the bank and the antique shop rather dangerous.

Your Sincerely

P. A. J. Seward

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WILDLIFE AND COUNTRYSIDE ACT 1981

**THE DEFINITIVE MAP AND STATEMENT FOR THE MERE AND TISBURY
RURAL DISTRICT COUNCIL AREA DATED 1952**

**THE WILTSHIRE COUNCIL MERE PATH NO.78 DEFINITIVE MAP AND
STATEMENT MODIFICATION ORDER 2019**

This Order is made by Wiltshire Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that the Mere and Tisbury Rural District Council Area definitive map and statement dated 1952 require modification in consequence of the occurrence of an event specified in section 53(3)(c)(i) of the Act, namely the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:-

- (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic.

The authority have consulted with every local authority whose area includes the land to which the order relates. The Wiltshire Council hereby order that:

1. For the purposes of this order the relevant date is 20th March 2019.
2. The Mere and Tisbury Rural District Council Area definitive map and statement dated 1952 shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as the Wiltshire Council Mere Path No. 78 Definitive Map and Statement Modification Order 2019.

891013

THE COMMON SEAL OF }
 THE WILTSHIRE COUNCIL }
 was hereunto affixed this }
 28th March 2019 }
 in the presence of:



Paul M. T...

Senior Solicitor

SCHEDULE

PART I

Modification of Definitive Map

Description of path or way to be added

That length of footpath as shown by a broken black line with short intervals on the attached plan, leading from point A at OS Grid Reference ST 8125-3237, at its junction with The Square, Mere leading in a generally northerly direction for approximately 57 metres to point B at its junction with North Street , Mere at OS Grid Reference ST 8126-3242.

PART II

Modification of Definitive Statement

Variation of particulars of path or way

<u>Parish</u>	<u>Path No.</u>	<u>Modified Statement to read:-</u>	<u>Modified under Section 53(3) as specified</u>
		<u>FOOTPATH</u>	
Mere	78	<p>From OS Grid Reference ST 8125-3237 at its junction with The Square , Mere leading in a generally northerly direction to OS Grid Reference ST 8126-3242 and its junction with North Street, Mere.</p> <p>Approximate length 57 metres.</p> <p>Width 1.8 metres at ST 8125-3237 narrowing to 1.5 metres from ST 8126-3238 to ST 8126-3240 at entrance to car park. Remainder of path to North Street 1.8 metres.</p>	53(3)(c)(i)

**The Wiltshire Council Mere Path No. 78
Definitive Map and Statement Order 2019**

381300


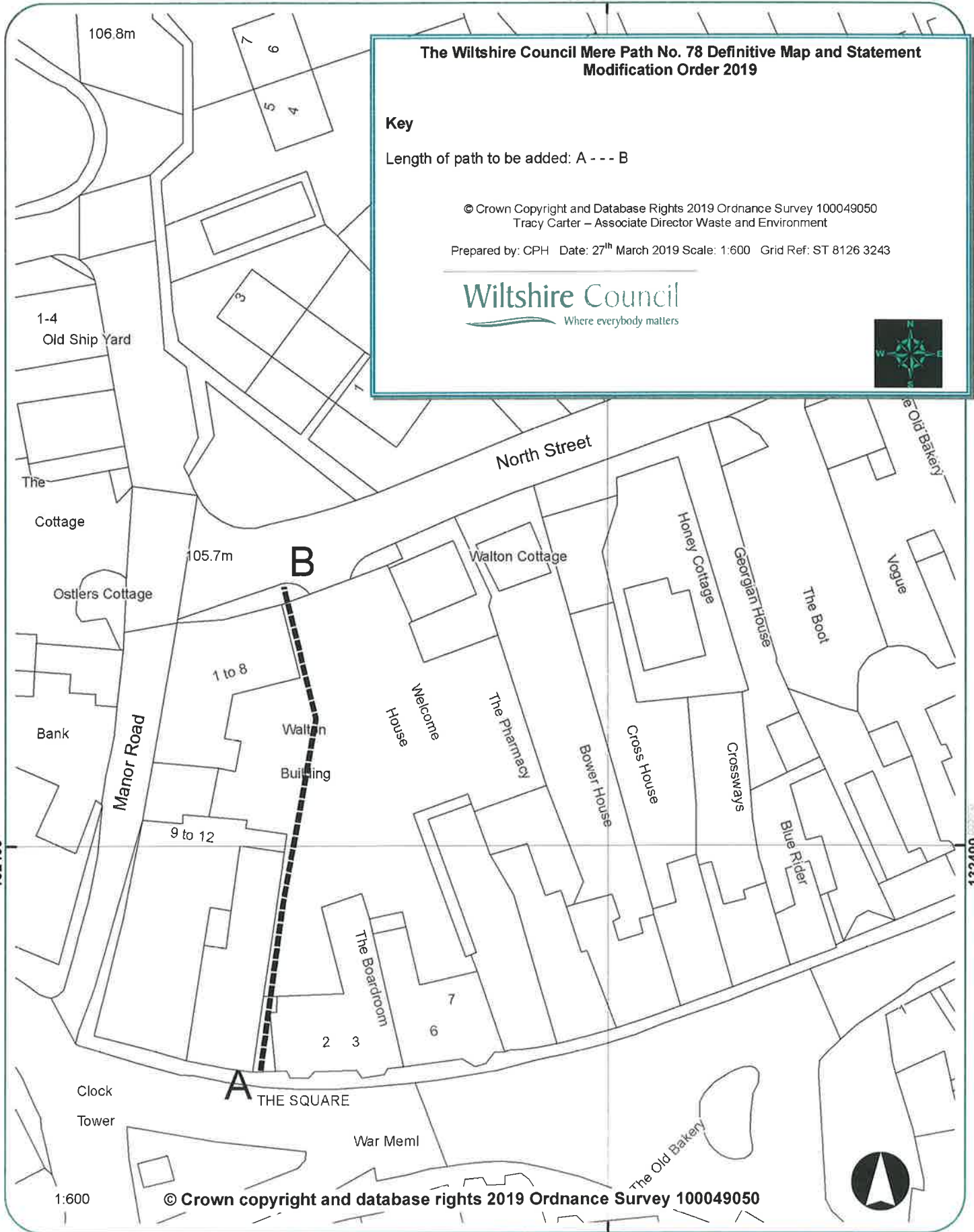
**The Wiltshire Council Mere Path No. 78 Definitive Map and Statement
Modification Order 2019**

Key
Length of path to be added: A - - - B

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Tracy Carter – Associate Director Waste and Environment

Prepared by: CPH Date: 27th March 2019 Scale: 1:600 Grid Ref: ST 8126 3243

Wiltshire Council
Where everybody matters

1:600

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381300

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LIPSCOMBE

BUILDING CONTRACTORS

Registered Office

Lower Langham Barn, Langham Lane, Gillingham, Dorset SP8 5NT

Telephone: (01747) 823599 Fax: (01747) 823591

Email: lipscombe.building.contractors@btconnect.com

03 June 2019

FAO: Mr Craig Harlow
Rights of Way & Countryside Team
Waste and Environment
County Hall
Bythesea Road
TROWBRIDGE
Wiltshire
BA14 8JN

Dear Craig

THE BOARDROOM HOUSE, MERE, WILTSHIRE

We are writing in response to Wiltshire Council's decision to add our path to the definitive map. To say that we are annoyed is an understatement. This has all been orchestrated by a minority, led by, at best, an undemocratic Councillor. It feels like the attempted theft of our land.

The user evidence statements are so inconsistent - some claim that planning conditions and covenants giving a public right of way exist. This simply is not true. One even claims that his estate agent told him that he had a right of way and others have changed or withdrawn their evidence once they knew it would be scrutinised - even the main applicant has contradicted himself several times. If this footpath is added to the definitive map it will have a huge impact on the owners and residents of the property/land. Therefore, surely any evidence given should be flawless.

Having studied the 'User Evidence Statements', we have made the following observations. It appears that all twenty-five claimed users have ignored paragraph four, page 1 of the evidence statement form. We find it bizarre that not one person out of the twenty-five has answered 'Yes' to Question 5 (your use of the route). This also applies to Question 10, Section C (other barriers etc). Photo P1 proves these claims to be false - it shows a barrier erected when the gates were removed for stripping, repairing and repainting (for a few weeks in 2011). How can it be that twenty-five users (some claiming several times a day, at least half daily and the rest up to three times per week, seem to have no memory of this)? They all seem to have forgotten the many temporary barriers constructed during the two and a half years of renovation work as well (See Photo P2) It seems odd that Cllr. Jeans, who lives in Mere, failed to notice this. The only consistent evidence appears to be from the past and present owners, stating that the gates were locked for long periods during their ownership.

We are resubmitting our original letter of objection (See document D1 enclosed), for the attention of the Wiltshire Planning Committee, and any future public enquiry. We have also enclosed further photos that we have managed to obtain from our archives, and from various professionals that were employed by us at the time. This, we now believe, is the incontrovertible evidence that Wiltshire Council stated was missing. Please see separate notes relating to the new photographic evidence.

We will take this opportunity to make Wiltshire Council, Wiltshire Planning Committee and public enquiry aware of the fact that we believe the true applicant should be listed as Cllr. Jeans, as he seems to be pulling the strings. Cllr. Jeans approached Robert Finan, the previous owner of The Boardroom House, to ask if he had locked the gates whilst he owned the property. Mr Finan informed Cllr. Jeans that he had indeed locked the gates and wedged the wooden doors shut. We consider this to be crucial evidence. Mr Finan had nothing to gain, as he sold The Boardroom House in 2007. Not only did Cllr. Jeans fail to include this evidence in his substantial dossier on the matter, he also withheld it from his fellow Cllrs (see June 2018 Minutes, Document D2). Unbelievably, he then went on to make a sweeping statement that from 1997 to 2017 the gates were not locked, and people had unchallenged access. He made no effort to contact us, the current owners of the Boardroom house, or to our knowledge, any of the other most affected residents/properties. Even the most basic planning application would benefit from hearing from both sides before a vote. This seems like a very Russian style of democracy...

Had the full facts been made available to all at the meeting, perhaps the vote may have been different? After all it only won by four to three to adopt the path, but there were five abstentions. This is very important, as we assume Wiltshire Council do consider the opinion of the Town Council - after all they do ask for it. Surely this vote should be declared void and not given any further consideration?

The most sickening thing about all of this is that in 2008 we submitted a very sympathetic planning application to convert this near derelict building into five flats and one cottage but the scheme was labelled as laughable by the, then, Town Council - it was recommended for refusal. This then cost us in the region of £15,000 to mount an appeal which we won. It seems absurd that seven years later, after we had gone to all that expense for these works, the Town Council can then try to claim it as theirs.

As you can see from the enclosed photos, when we bought the property in 2007, this path and surrounding area was in a very poor and dangerous state – channel drains with no grills on top, a BT manhole with a loose ply covering, a sewer drain with a raised cover, mud and uneven concrete surfaces (See Photos P3,4,5,6 and P7). Also, to the side of the path at the top, there was a 4' sheer drop with no handrails (See photo P8). We are amazed that none of the user evidence forms seem to describe this. This area only became a pleasant, level, tarmac and slabbed pathway after we finished the development in mid-2012. It certainly was not suitable for prams, buggies, mobility scooters, wheelchairs, shopping trolleys or walking frames as claimed. Please see the before and after photos – Document D3. We think that Cllr. Jeans should put his obvious concerns for Mere residents' safety into upgrading and renewing the existing pavements and footpaths that the Council do own, rather than trying to get one for free. After all, highway safety and the state of the existing footpaths should not be a reason to just claim someone else's land.

Please bear in mind, this is not just a path across the corner of a farmer's field...

Yours sincerely



MR ANDREW LIPSCOMBE
Joint Managing Director

On behalf of Lipscombe Building Contractors / Lipscombe Developments Ltd

Mob: 07971 065290

Encs.

Document Evidence – D1 to D4.

Photographic Evidence – P1 to P12

LIPSCOMBE

BUILDING CONTRACTORS

Registered Office

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Telephone: (01747) 823599 Fax: (01747) 823591

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03 June 2019

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Waste and Environment
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Bythesea Road
TRQWBRIDGE
Wiltshire
BA14 8JN

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Page 153

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Yours sincerely



MR ANDREW LIPSCOMBE

Joint Managing Director

On behalf of Lipscombe Building Contractors / Lipscombe Developments Ltd

Mob: 07971 065290

Encs.

Document Evidence – D1 to D4.

Photographic Evidence – P1 to P12



Photo
"P 1"

Taken: 12/04/2011
Barrier in place
While gates
restored.

Date 31 Mar 19
Boots, 8166024103, 00000039.JPG

Photo "P2" Date taken: November 2011



Plywood
Barrier

P3, P4, P5, P6

NB: In my original letter of objection, I stated that I met with the, then, owner, Mr Robert Finan, to view the property. I said that I distinctly remember him unlocking the gates to allow us to access the rear of the building. I have attached four photos, P3, P4, P5 and P6, taken on 22/11/2007, that unequivocally show a chain and padlock on the gates. This was almost exactly one month after we bought the property at auction. (Oct 2007) but still three years before we even started the works.

In the background of these photos you can clearly see the piece of ply, drains and poor condition of the path.

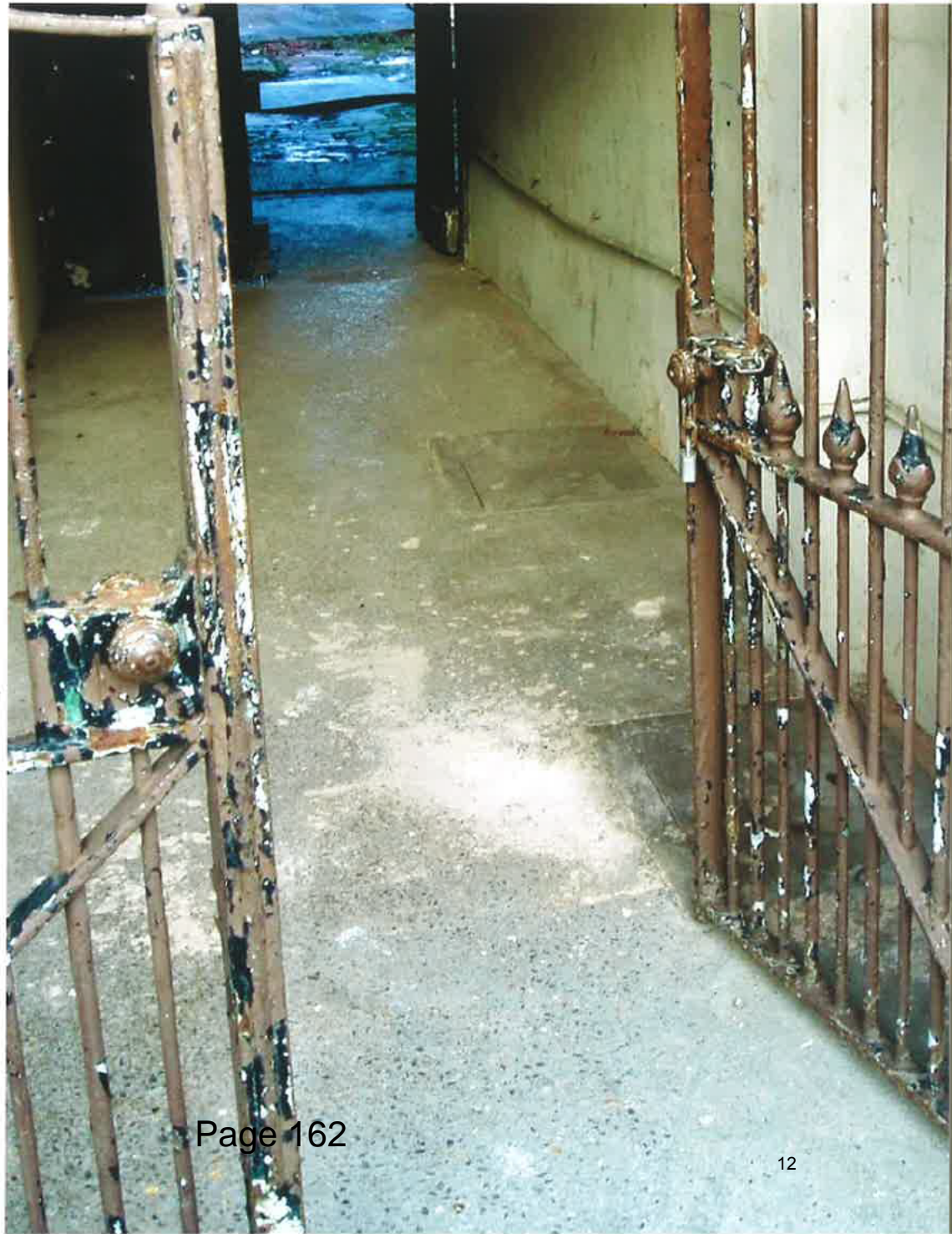
Page 158

NB: The gates and doors are ajar as the person taking the photos opened them to get to the rear. 8

P3



P4



PS



P6

22/11/07



P7

Date taken : 17/03/09



"P8"

Photo taken : 2007

View from
stairwell
window.



4 ft (approx.)
Sheer
drop
at top of
path



"pq"

Date taken: 17/03/09

Parked cars and wheelie bins
blocking access especially for
wheel chairs etc.

"P11" Two years before:
Starting works

Date Taken: 19/05/2008

Gates shut and

Back wooden gates

clearly shut too due to

Page 171

no light coming through.



Date taken : 17/03/09
1 Year before starting works.

"P12"



"P 10"
Three years before
Starting works

Wooden
doors
shut



Date taken → 31/12/2007 3:12:25 pm

14.

Attached photos: P10, P11, P12 all show the heavy timber doors shut – three random dates spanning a 15-month period between 2007 and 2009. How is it that, including return journeys, 280 or more people (according to the user forms), not including others who have not completed these forms, have used this route over a week, using all kinds of walking/wheeled apparatus and have all been conscientious enough to close the doors behind them?

According to one witness "the whole of M... used 174 path..."

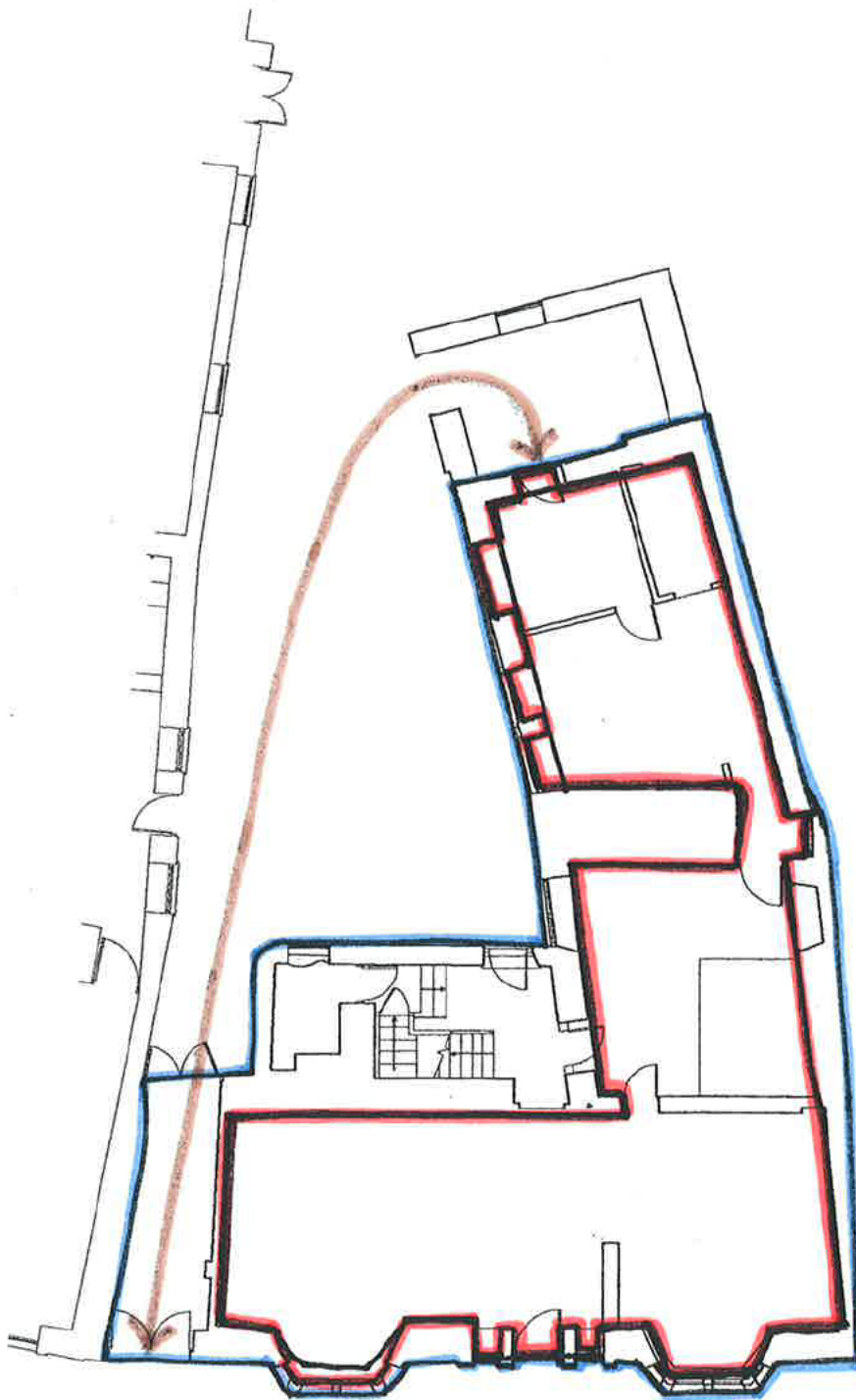
Document Evidence

D1 → D4

The Boardroom House, Mere

Lease agreement from July 2000 clearly shows the
Tinder doors.

FOR IDENTIFICATION PURPOSES ONLY



Handwritten signature
f. thewell

GROUND FLOOR PLAN N.T.S.

1, 2 and 3 THE SQUARE, MERE.

Original letter
of objection.

COPY

28 June 2018

FAO: Mr Craig Harlow
Rights of Way & Countryside Team
Waste and Environment
County Hall
Bythesea Road
TROWBRIDGE
Wiltshire
BA14 8JN

Dear Craig

THE BOARDROOM HOUSE, MERE, WILTSHIRE

Thank you for meeting with me on the 5th June. I hope this gave you the chance to familiarise yourself with the location and the path/courtyard in question.

We most strongly object to our land being added to the definitive map. I would like to question why a councillor would, not only back this application, but also actually try to drum up support with such enthusiasm. We believe that this application is vexatious and a waste of tax payers' money. It will have a detrimental effect on so many people's properties and privacy. Surely councillors should take an unbiased view in this situation? It's absurd to think it's necessary to have three separate routes from North Street to Salisbury Street within a distance of approx. 100 metres.

The applicant has no reason to take this route from his house to The Square – there are several other more direct routes available to him and anybody else. It takes forty extra paces to get from points A to B via Manor Road. There is also a direct route from North Street to Salisbury Street via a foot path called Penny Bank Lane. Anyone living on the Eastern or Western side of Mere can simply walk along Salisbury Street to The Square and use one of the other routes to get to the Northern side of Mere.

We purchased The Boardroom House and land at auction in around 2008. Due diligence and advice from our Solicitors at the time confirmed that the land belonged to us, but that residents of The Old Post Office and The Walton building had a right of way over this land and under our building to the High Street (Point B). There are even covenants in place for the maintenance and up-keep of the path and The Walton building car park. It seems strange that if this application was approved, just a few people would have to pay for the path's up-keep and maintenance for anyone and everyone to use it as they please.

We purchased the building in good faith and subject to the legal advice given. Our original plan was to develop and sell the building. We would not have continued with the purchase had we been advised that a possible public footpath ran straight through our land and under the building. This area now forms a private courtyard for Flats 1-5 and a garden for The Boardroom Cottage. It is used for relaxing, barbeques and is also a secure place for any of our tenants' children to play. Our tenants and the residents of The Old Post Office and Walton building do not benefit from proper gardens, unlike most of the supporters of this application, who probably do. Our path narrows down to about 4ft wide as it goes beneath the building, so if

the application is successful, people would literally be able to walk freely straight through our tenants' courtyard and garden area.

Prior to the auction, I met with the *then* owner, Mr. Robert Finan to view the property. I distinctly remember him unlocking the gate to allow me to view the rear of the building. There were also a pair of substantial wooden doors to the back of the covered area – these doors were bolted shut (see photo). He will confirm this and also the fact that he used to lock the gates and bolt the doors. We are also reliably informed that when The Old Post Office was in use, these doors were permanently locked, albeit some years ago. We locked the gates on and off throughout the two year period of development work. Once complete, we left the gates unlocked but fixed PRIVATE signs to the gates and the fence to the rear. These were torn down (repeatedly) and in less than a week of putting them up. There is also a permanent private sign at the entrance to The Walton building car park for all to see. We believe that anyone using the path had a good idea that it was private land and were just taking a (*not very*) shortcut to the High Street (point B).

Furthermore, whilst the gates were unlocked the 20ft covered path area under the building became a target for vandals. Beer cans were pushed into light fittings, litter left strewn around, and rubbish stuffed into our tenants' letter boxes. We've also had to clean up vomit, urine (and worse). Youths were loitering at all times of day and night causing a nuisance. The councillor or councillors and residents of Mere who are in support of the application, should really ask themselves if they'd like this happening right outside *their* front doors? Also, when the gates were unlocked during wetter weather, up to a dozen people would wait for the bus under our building. Does this mean it should become a designated bus shelter too?! We decided to lock the gates and issue keys to our tenants and other residents who had a legal right of way (approx. 17 keys).

If the application is granted, it will affect the privacy and enjoyment of the amenity area that our tenants now benefit from. As the owners of the building, it will severely affect the saleability, its value and make the properties much less desirable to rent, thus affecting our business financially.

Yours sincerely

MR ANDREW LIPSCOMBE

Joint Managing Director

On behalf of Lipscombe Building Contractors / Lipscombe Developments Ltd

Mob: 07971 065290

Encs.

Plan showing alternative routes

Photo of gates with doors visible from front

Photo of doors visible from rear

Harlow, Craig

From: Lindsey [REDACTED]
Sent: 04 July 2018 10:59
To: Harlow, Craig
Cc: Jeans, George
Subject: Application for an Order to add a footpath to the definitive map and statement at The Square, Mere.

Dear Craig,

Thank you for your letter of 23rd May – (Your ref: 2018/03) and attached plan. I can confirm that this was presented to the Town Council at their June meeting. The simplest way for me to respond is to send you a copy of the approved Minutes as copied below:

b) Application for an Order to add a footpath to the definitive map and statement at The Square, Mere – a copy of a letter from Wiltshire Council's Rights of Way Officer had been distributed to members with their agenda papers – the letter stated that Wiltshire Council had received an application to add a public footpath to the definitive map and statement leading from The Square in a northerly direction to North Street (plan attached). Wiltshire Council is now placed under a duty to investigate the available evidence to determine, on the balance of probabilities, whether or not a right of way for the public on foot, subsists or can be reasonably alleged to subsist and to amend the definitive map and statement of public rights of way accordingly. Wiltshire Council were inviting the Town Council's comments on this matter and would be grateful to receive any further evidence regarding public use of the route in question and/or historical evidence of the claimed route.

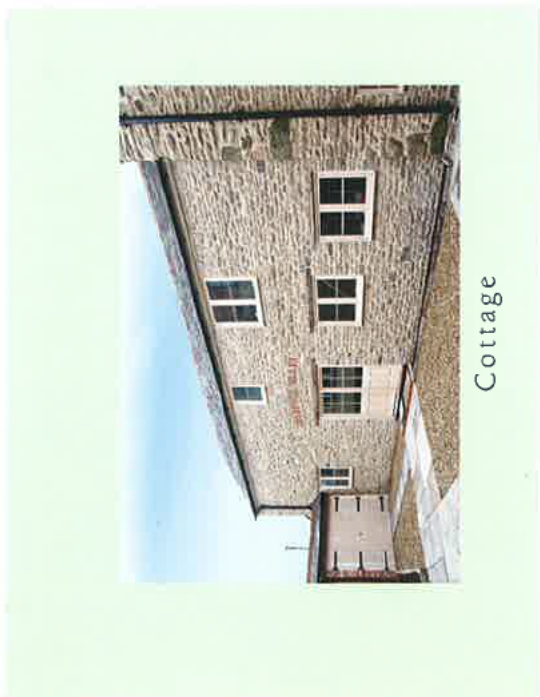
- Cllr. Jeans explained that he had collected quite a dossier on this issue as he had had a large number of people contact him when the gate was locked recently and access was blocked. He pointed out that many people used this path as a safe way of getting from The Square to North Street/Manor Road/North Road as the alternative route, between the old Lloyds Bank and Waltons Antiques buildings, was a single width roadway with no footpath and it was hazardous to walk along here with young children or a pram/pushchair. Cllr. Jeans explained that in order to claim a public right of way you need to produce evidence that unobstructed access was available for a 20 year period minimum. Cllr. Jeans says that from 1997 to 2017 the gates were not locked and public access was available and as far as he is aware people have not been challenged when going through there and there were no signs saying that people were not allowed to go through there. Cllr. Sims said that, many years ago when Mrs. Young had the post office next door, apparently this was a closed off area. Cllr. Jeans confirmed that Mr. Andy Young controlled the building and access on behalf of Mr. Clifford (the owner) until approximately 1989. Sam Squires was the last person to chain the gates up in 1992. After that, people went through there unopposed until the gates were shut in December 2017.

Cllr. P. Coward said that he could not remember it ever being open for public use. Cllr. Mead said that he could not ever remember it being open for public use. Cllr. Norris said that he had used the path within the last 12 years and had not been challenged, although he had not thought of it as a public right of way. Cllr. Sims said that the alleyway was used as a public toilet and a place for people to take drugs. Cllr. R. Coward said that his grandson used it on a regular basis when he gets off the school bus to get to North Street. **RESOLVED** that, should it be legally feasible for this route to be added as a footpath to the definitive map and statement, then it would be welcomed as a safer route for pedestrians to come into town on proposal made by Cllr. Jeans, seconded by Cllr. Mrs. Hurd and carried with a vote of 4 for, 3 against and 5 abstentions.

Lindsey Wood

← After Renovation

Before →



Cottage



"D3" continued

These photos are from Wiltshire Council's decision report post mid-2012, after the renovations completed.

Appendix 3

5.4.



5.5.



PTO

Decision report for the proposed
footpath and public rights of way
along the wall of the
Cathedral

5.2.



5.3.

↑ Post mid 2012 ↓



5.6.



↕ Post mid 2012

5.7.



5.8.



5.9.



Sage 30cloud Accounts Professional - Lipscombe Building Contractors Ltd

File Edit View Modules Settings Tools Favourites WebLinks Help

Home Help centre Add-Ons

Audit trail report Accounts audit Verification reports View Edit Delete Send to Excel Reports

Filter Find **All records (7819)**

Journal	Dept	Project	Details	Date	Posted Date	Due On	Ref	Dr Ref	Net	Tax	T/C	Paid	Amount Paid	Link
2220			Ryszard Sekula	16/03/2018	24/03/2018		BACSRV		375.31	0.00	T9	Y	375.31 R	
2230			Weedy Penson	21/03/2018	24/03/2018		BACS		27.85	0.00	T9	Y	27.85 R	
7502			Payment to GE Capital for telephone lease	01/02/2018	24/03/2018		DD		145.20	29.04	T1	Y	174.24 R	
7502			Payment to GE Capital for telephone lease	01/03/2018	24/03/2018		DD		120.20	24.04	T1	Y	144.24 R	
7502			Payment to GE Capital for telephone lease	01/08/2018	24/03/2018		DD		120.20	24.04	T1	Y	144.24 N	
7502			Payment to GE Capital for telephone lease	01/11/2018	24/03/2018		DD		120.20	24.04	T1	Y	144.24 N	
1200			Cancel - see tran 52923	22/03/2018	22/03/2018		BACS		2400.00	0.00	T9	N	0.00 -	
7302			12 Months RFL for HJ14 DXU	24/03/2018	24/03/2018		DC		240.00	0.00	T2	Y	240.00 R	
7302			Cancel - see tran 52948	24/03/2018	24/03/2018		DC		240.00	0.00	T2	Y	240.00 -	
1232			Purchase Payment	12/04/2018	24/03/2018		BACS		672.00	0.00	T9	Y	672.00 R	
1232			Purchase Payment	24/03/2018	24/03/2018		BACS		3987.60	0.00	T9	Y	3987.60 R	
1232			Purchase Payment	24/03/2018	24/03/2018		BACS		2746.28	0.00	T9	Y	2746.28 R	
5000			Credit for cement price adj	09/02/2018	24/03/2018	09/02/2018	AKN327		2.00	0.40	T1	Y	2.40 -	
5000			Credit for Timber, cement, blocks, lead flashing	09/02/2018	24/03/2018	09/02/2018	AKN326		216.83	43.38	T1	Y	260.21 -	
5000			Credit for OSB Price adj	09/03/2018	24/03/2018	09/03/2018	AKO590		29.00	5.80	T1	Y	34.80 -	
5001			Payment to Screwfix for Tile saw	18/08/2017	24/03/2018		DC		94.99	0.00	T9	Y	94.99 R	
5000			Payment to Adesign for signs	14/08/2017	24/03/2018		DC		20.00	4.00	T1	Y	24.00 R	
2220			Net Wages	27/03/2018	28/03/2018		Week 51		1565.85	0.00	T9	Y	1565.85 -	
2210			National Insurance	27/03/2018	28/03/2018		Week 51		336.16	0.00	T9	Y	336.16 -	
2210			PAYE	27/03/2018	28/03/2018		Week 51		209.00	0.00	T9	Y	209.00 -	
7004			Deductions	27/03/2018	28/03/2018		Week 51		11.94	0.00	T9	Y	11.94 -	
7004			Payments	27/03/2018	28/03/2018		Week 51		1943.15	0.00	T9	Y	1943.15 -	
7006			Employers NIC	27/03/2018	28/03/2018		Week 51		179.80	0.00	T9	Y	179.80 -	
2220			Net Wages	31/03/2018	28/03/2018		Month 12		1583.32	0.00	T9	Y	1583.32 -	

Date paid (Adesign)

NB: In our original letter of objection, we stated that we fixed private signs to the gates and the fence to the rear. These were torn down repeatedly. The original private signs were simple laminated signs that we printed ourselves. I have no way of proving this or nor can I prove that I fixed them as stated. I didn't take photos of them (why would I?). Due to this vandalism, we resorted to getting proper aluminium signs made by 'Adesign', Gillingham. The attached invoice and payment proof for this private sign, although dated in 2017, does prove that we had them made. Even these were taken down by unknown Mere residents.

ADESIGN & Sew Your Own
are trading names of:

"D4"



Appendix 3

www.ade-sign.co.uk 01747 822286

Shirts & Signs Ltd

Tel: 01747 822286

e-mail: ade@ade-sign.co.uk

Invoice

PLEASE NOTE
ALL CLOTHING AND GRAPHICS
INVOICES ARE DUE IN FULL
BEFORE WORK COMMENCES

CASH (LIPSCOMBE BUILDERS LTD)

Page	1
INVOICE No.	2925
INVOICE TAX DATE	14/08/2017
CUSTOMER ORD. No.	
ACCOUNT No.	CASH

Tel No:

Quantity	Details	Unit Price	Disc Amount	Net	VAT %	VAT
1.00	ACM PRINTED/LAMINATED ALUMINIUM SIGNS "PRIVATE"	20.0000	0.00	20.00	20.00	4.00
0.00	Cash Sale - paid in full		0.00	0.00		0.00
	Deposit Paid	24.00		Amount Due		0.00

DELIVERY ADDRESS

ALL CLOTHING &
GRAPHICS ARE DUE
FOR PAYMENT ON
INVOICE

Total Discount	0.00
Total Net Amount	20.00
Carriage Net	0.00
Total VAT Amount	4.00
Invoice Total	£ 24.00

Shirts & Signs Ltd, Unit 33, Brickfields Business Park, Gillingham, Dorset. SP8 4PX

Registered Office; 1, The Centre, Gillingham, Dorset. SP8 4AB Registered in England number 08595193

VAT number: GB 170 9504 09

GILYARD
SCARTH
LETTINGS

The Old Coffee Tavern
Salisbury Street **MERE**
Wiltshire BA12 6HA
Telephone 01747 860372
Fax 01747 861120

mere@gilyards.co.uk
www.gilyardscarth.co.uk



Mr C Harlow
Rights of Way Officer
Waste and Environment
Wiltshire Council
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Thursday, 06 June 2019

Dear Craig

Re: The Wiltshire Council Mere Path no 78: Ref no 2018/03

I am writing on behalf of The Walton Building Management Company in response to the application to add a footpath from The Square, Mere to North Street, Mere (Path No 78).

The owners are concerned firstly with regards to the issues that have been raised previously, being:-

- 1) Noise, disturbance and nuisance and loss of privacy to those residents particularly adjoining the right of way.
- 2) Wear and tear to the paving across the car park which is owned by The Walton Building Management Company.

The second point also raises the issue of the maintenance of the footpath if the order is accepted and a footpath is created, will the council maintain it and where does the liability lie if somebody should have an accident?

Yours sincerely

[Redacted Signature]

Saffron Reilly-Stitt
On behalf of The Walton Building Management Company

Associated offices

The Old Cycle Shop, Long St
SHERBORNE, Dorset DT9 3BS
Tel 01935 817360 Fax 01935 817354
sherborne@gilyards.co.uk

The Old Wine Merchants, 25 High St
SHAFTESBURY, Dorset SP7 8JE
Tel 01747 860372 Fax 01747 861113
shaftesbury@gilyards.co.uk

The Old Pine Shop, High St
GILLINGHAM, Dorset SP8 4QT
Tel 01747 825533 Fax 01747 826000
gillingham@gilyards.co.uk

Harlow, Craig

From: Katy Dyke [REDACTED]
Sent: 22 May 2019 17:09
To: Harlow, Craig
Subject: Formal Objection to CH201803

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Craig,

Further to your letter dated 16th April, ref: CH2018/03, I write to formally object to the proposed addition of a public footpath from The Square to North Street, Mere.

The grounds upon which I form my objection are as follows:

- The land has been, and is currently, private land
- In the years we have resided in our property, to our knowledge the footpath has only been used by the residents of the surrounding building/car park and the gate has been secured, to avoid public access. Thus implying the public are not welcome to use the path
- Allowing the footpath would undoubtedly have an effect on the value of the properties outlined in the enclosed 'Definitive Map and Statement Order 2019'
- Pedestrians may use the existing public footpath, Penny Bank Lane

To make you aware, whilst building work was being undertaken in the flats adjacent to the access point to North Street, the gate was locked for the duration, to stop the public entering the car park and no complaints were made.

Finally I would like to express my disappointment in the fact the Council, to whom we pay a hefty fee each year, has deemed this a valuable exercise to spend money on; when there is a perfectly good public footpath merely yards away.

I have also issued this objection via the post for your records.

I look forward to hearing from you regarding the progress of the order.

Kind regards

James Dyke

Flat 3 The Welcome House



Virus-free. www.avg.com

Harlow, Craig

From: Andrew Holder [REDACTED]
Sent: 07 June 2019 12:36
To: Harlow, Craig
Subject: Re: Footpath between The Square and North Street , Mere
Attachments: Footpath.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mr Harlow

Please find attached a letter from me concerning the application to make a right of way at The Square, Mere, Wiltshire BA12 6DL.

Please do not hesitate to contact me if you need any further information. Would you be good enough to acknowledge receipt of this before the cutoff point.

Thank you.

Best regards
Andrew Holder

On 16 Apr 2019, at 14:45, Harlow, Craig <Craig.Harlow@wiltshire.gov.uk> wrote:

Dear Mr Holder

The Wiltshire Council Mere Path No.78 Definitive Map and Statement Modification Order 2019.

Please find attached to this email the letter, notice and order in relation to this case.

If you have any queries please let me know.

Regards

Craig

Craig Harlow
Acting Rights of Way Officer (Definitive Map)
Rights of Way Warden (North / Central)
Environment Services
Wiltshire Council

[Tel:01249 468568](tel:01249468568) / 01225 712810
Ext:28568
Mob:07767 670709
Email: craig.harlow@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

Follow Wiltshire Council

<image002.png> <image004.png>

Follow Wiltshire Countryside

<image002.png> <image004.png>

“Information relating to the way Wiltshire Council will manage your data can be found at: <http://www.wiltshire.gov.uk/recreation-rights-of-way>”

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<Order letter Mere.doc><Sealed order.pdf><notice of making an order.docx>

Harlow, Craig

From: Gill Main [REDACTED]
Sent: 07 June 2019 13:11
To: Harlow, Craig
Subject: The Wiltshire Council Mere Path No 78 Definitive Map and Statement Modification Order Reference no. 2018/3

Sent from my iPad

Dear Mr. Harlow,

I refer to my e-mails of 5th and 19th July, 2018 when I objected to the above proposal. I wish those objections to be taken into account again.

Yours faithfully,
Gillian Main

Received 10/5/19

Rights of Way Team
Wilts Council
County Hall
Bythesea Rd
Trowbridge
Wilts
BA14 8JN

Flat 4 Welcome House
North Street
Mere
Wiltshire
BA 12 6HH

9th May 2019

Your Ref: CH 2018/03

Dear Mr Harlow,

Wildlife and Countryside Act 1981-Section 53

The Wiltshire Council Mere Path No 78 Definitive Map and Statement Modification Order 2019

Thank you for your letter of 16th April last regarding the above.

I strongly object to the above order for the same reasons as I explained in my letter to you on 11th June 2018 (copy enclosed).

Yours Faithfully,



Alan Morris
Secretary, Welcome House Residents Association
tel: 07710 453516

Mr T Bennett	Flat 1
Miss S Scarr	Flat 2
Mr J Dyke	Flat 3
Miss J Ackerman	Flat 5

Mr C Harlow
Waste and Environment
County Hall
Trowbridge
BA14 8JN

Flat 4, Welcome House
North Street
Mere
Wiltshire
BA12 6HH

11th June 2018

Your Ref: 2018/03

Application to add footpath to the definitive map at The Square, Mere.

Dear Mr Harlow,
In reply to your letter of 23rd May.

I and my fellow residents are firmly against the above proposal to add a public footpath that would go through a private courtyard area and car park.

The path heading North to South, leading onto an extremely busy four road junction, has a downward slope that encourages the local children to use their skateboards and scooters, if the gates at the bottom are left open they could easily lose control and career into the oncoming traffic or collide with a pedestrian.

An accident waiting to happen.

A much safer option is to use the pathway which runs from North Street down Penny Bank Lane which brings you out to the zebra crossing on Salisbury Street or indeed to take the short walk down Manor Road.

The covered archway at the end of the path is used by teenagers as a meeting place late into the night, evidence of the drinking of alcohol and taking of drugs have been found along with a variety of rubbish, the walls and roof of this area are a mess.

They also congregate around the bench located in the gardens of the residents car park, property has been stolen and vehicles vandalised.

This behaviour is very intimidating to everyone and especially to the elder residents of the area. Barry, the gentleman who opens and shuts the doors to the Clocktower every day informs me that since the gates at the bottom of this path have been locked, there is less rubbish to clean up and a general improvement of the area has been noted.

I have spoken with Mr Robert Finan who once owned the properties around the archway area and he has informed me that he always kept the gates padlocked but a gang of drug dealers would use bolt cutters to open them up again in order to deal under cover. Drug dealers are still active in this area.

There was also a second set of gates made of thick, solid wood which were also kept locked and to his knowledge never opened because they were there as added protection for the back door of the Post Office which was then located next to the arch, which is now the charity shop. The hinges of this gate are still there on the wall under the arch.

Mr Finan can be contacted at 07759 422037 or
He has told me that he is more than willing to help you in any way he can.
After all is considered, I do not think this path has ever been a right of way.

Are you aware that not one resident I have spoken to from Walton Buildings flats 1 to 10, have received your letter?

This is a terrible oversight as the proposed public footpath runs the whole length of that building and the residents should have a chance to put their views forward.

As secretary of the Welcome Flats Residents association, I represent the owners of all five flats in this building and they are all against the proposed path.

I would welcome the chance to discuss this matter in person with you when you make your site inspection visit, which you surely must in order to assess the situation.

Yours Faithfully



Alan Morris
tel: 07710 453516
Secretary, Welcome House Residents Association

Tim Bennett	Flat 1
Samantha Starkie	Flat 2
James Dyke	Flat 3
Julie Ackerman	Flat 5

**CROSS HOUSE
SALISBURY STREET
MERE
BA12 6HE**

6th June 2019

OS Grid Ref : ST 8125-3237 to ST 8126-3242

Your Ref : 2018/03

Dear Mr Harlow

With regard to the above order I have no objection to the Right of Way proposed.

As a resident of Mere since 1985 I have used this route regularly until the installation of the key lock recently. I use it often when popping through to friends and walking my dog plus avoiding a wet route through my own garden and 2 doors through my garage when carrying items from my parking to the front of my house in Salisbury Street.

I have never been stopped or challenged in using it as safe passage from The Square to North Street along with many other residents young and old. Rarely it was padlocked on Xmas Day. But not for at least 20 years. Manor Road is very narrow with no pavement and there have been numerous near misses recently.

Mere is very quite with no yob culture anymore thankfully, obviously the archway along with the Clock Tower have been used for years as somewhere to wait for buses or friends in inclement weather. We no longer have the night bus to nightclubs both locally or at Trowbridge which were a hindrance.

Yours sincerely


Diane R Pringle

Mere Town Council

TOWN CLERK - MRS. L. C. WOOD



Duchy Manor,
Springfield Road,
Mere,
Warminster,
Wiltshire
BA12 6EW
Phone: 01747 860701

e-mail: lindseywood@merewilts.org
www.merewilts.org

Craig Harlow,
Rights of Way Officer,
Rights of Way and Countryside,
Waste and Environment,
Wiltshire Council,
County Hall,
Bythesea Road,
Trowbridge,
Wiltshire
BA14 8JN

4th June 2019

Dear Mr. Harlow,

Ref No: 2018/03

Wildlife and Countryside Act 1981 – Section 53

The Wiltshire Council Mere Path No. 78 Definitive Map and Statement Modification Order 2019


I can confirm that your letter of 16th April (& enclosures) was presented to the Town Council at a meeting held on 13th May. I give below a copy of the Minutes and Resolution relating to this matter:

a) Wiltshire Council Mere Path No. 78 Definitive Map and Statement Modification Order 2019 (The above order was made on 28th March 2019. The order, if confirmed, will add a public footpath to the definitive map and statement for the area, from The Square, Mere leading in a northerly direction for approximately 57 metres to North Street, Mere. Any representation or objection relating to the order must be sent in writing not later than 7th June 2019). Cllr. Jeans reported that a significant number of people have sent in representations both for and against. Cllr. Mead said he thought this came up some months ago and the Town Council said we did not want to get involved. The Clerk informed Cllr. Mead that the Council had agreed that they did not want to become involved in the proposals to make a modification order but now that this had been done by

a third party, the Town Council was being consulted on the modification as a statutory consultee. Cllr. R. Coward said that he was in favour of supporting the modification on the grounds that it would be a safer alternative route for parents and children than having to walk along the narrow stretch of Manor Road between the old Lloyds Bank and Walton Antiques where there is no pavement. RESOLVED to support the Modification Order on proposal made by Cllr. R. Coward, seconded by Cllr. Mrs. Symonds and carried with a vote of 9 in favour, 2 against and 1 abstention.

I hope this information is helpful.

Yours sincerely,



Mrs. Lindsey Wood,
Town Clerk.

Harlow, Craig

From: Hamish Bell [REDACTED]
Sent: 14 May 2019 21:02
To: Harlow, Craig
Subject: Mere Path No.78 - Support for its addition to the Definitive Map

Dear Craig,

I strongly support the designation of this path from The Square, Mere, in a northerly direction to North Street, Mere.

There is a public safety issue here. Manor Road is the present means of accessing the Square from North Street. This is narrow with no pavement for most of its length. Elderly persons and those with disabilities, and parents with prams or walking children, constantly have to press themselves to the wall in order to allow vehicles to pass. These are often tractors or other large farm machines. Many vehicles do so at speeds which are dangerous in such a confined space. Traffic approaching from the rear can cause particular difficulty for those, such as myself, who have significantly reduced hearing and for which no allowance is made by many drivers.

The current building works, and the increased traffic when all the apartments are occupied only exacerbate the position.

I can understand that some residents may not wish noises outside their windows, but many houses in Mere (such as my own) front onto busy streets but their occupants cheerfully accept this as part of living in a small town such as Mere.

I strongly urge the Council to make this order confirming this far safer route.

Regards
Hamish Bell
Downside, North Street, Mere, BA12 6HH

No	Name	Period Of Use and Frequency	Width Of Route	Obstructions on Route	Signs on route	Challenged on route or received permission	Comments/other notes	Willing to attend PI or interview	Response to clarification letter regarding locked/ braced gates
1	Graham Sams	1991-2017- daily	2 metres	Gates- chained (Christmas time) 1989 and at night until 1991. Also obstructions until mid-90s	No	No not before 2017- told not a row	Used with his family and aware others used it- gates may have been pushed closed in mid 1990s but never locked	yes	No response
2	Betty Ingram	Early 1990s to now- daily	Width for shopping trolley and pushchair	Gates- but not locked for more than 20 years	no	No-only locked in 2017	People use the access for shopping- used for more than 20 years- alternative route dangerous	Yes	Yes-letter--no memory of locked or braced gates going back to 70s
3	Margaret Durkee	1979-2016- weekly	6 ft	Gates- but not locked till recently	no	Heard people challenged since gate was locked	Informed planning permission for the development of the flats dependant on access being open.	Yes	See below note- may apply to Mrs Durkee aswell as Mr Durkee but not clarified
4	Michael Durkee	1975-2016- weekly	6ft	Gate- not locked until 2017	no	Heard people cannot get through locked gate	Developers conceded it was a right of way in their covenant- alternative route is unsafe.	Yes	Yes-email and phone call – Clarified used route rarely- once every few months- since the children have not been in pushchair (children now in their 30s). Has no memory of locked gates in last 30 years, admits may not have seen if gate was locked when

No	Name	Period Of Use and Frequency	Width Of Route	Obstructions on Route	Signs on route	Challenged on route or received permission	Comments/other notes	Willing to attend PI or interview	Response to clarification letter
5	Michael Taylor	1950s-present time-various frequency-moved from mere in 2001	Wide enough for pushchair,wheel chair	Gates from The Square- never been locked	no	Nothing until dispute arose	Alternative route is dangerous	Yes	not using it. Yes-email-no knowledge from 2001.79-85 doesn't remember gates being locked when he used it, however could have been closed at some time.
6	Judy Ann Hingley	1999-2018- once to 2/3 times a week	Wide enough for people to pass except by gate	Gate by the square exit-cannot open when locked	n/a	Not filled out this section of form	Believe it should be a row after 20 years use	Yes	Phone call- if saw gate was closed from north would not use so unsure if closed or locked and only used if weather was good as in wheelchair and husband has 2 push. Still used 2/3 times a week.
7	Simon Hingley	1999-2018- weekly	2 metres	Gate locked for last few weeks	No	Saw on facebook that path is closed	Alternative is dangerous	Yes	See above
8	Vanessa Hardcastle	1971- till locking of gates- weekly	n/a	Gate locked in 2018	no	no	Not willing to be interviewed or attend inquiry. Used route in wheelchair as safe option.	No	See below
9	Leonard Hardcastle	1971- now – weekly-clarified on phone used once a fortnight	n/a	Gate locked until jan 18	no	no	Used as safe with daughter in wheelchair	yes	Phone call-clarified used once a fortnight

No	Name	Period Of Use and Frequency	Width Of Route	Obstructions on Route	Signs on route	Challenged on route or received permission	Comments/other notes	Willing to attend PI or interview	Response to clarification letter
10	Shirley Reynolds	Most of life (born 1942)- weekly/monthly	5ft 7 inches at gate	Used till gate locked	no	no	Postcard from 1971 shows no iron gates on entrance- ON CLARIFICATION BY PHONE 29/01/2019- REMEMBERS OLD SOLID GATES , DOESN'T REMEMBER GOING THROUGH THEM OR USING ROUTE AS A WHOLE. THIS WAS MANY YEARS AGO AND DOESN'T REALLY REMEMBER. DOESN'T WISH TO BE CONTACTED AGAIN DUE TO HEALTH- BUT INFORM BY LETTER OF DECISION.	no	Phone call- remembers wooden gates and didn't use route as whole. No further contact due to health.
11	Mr & Mrs Johnson	Approx. a decade or more-daily	170cm	Gates but not locked	no	no	Phots from 1965/71	no	Yes-Letter- never challenged when using. Didn't answer questions in letter
12	Mrs Lynn Rainforth	1999-2018 weekly(4x a week)	Two people wide	Gate locked since 2017	no	no	Safer to use than alternative	no	Yes-letter- nothing more to say
13	Mrs Joyce Moody	1990-2018 weekly	Two people side	Gate locked sine 2017	no	no	Safer to use than alternative	no	Yes-no knowledge of locked or braced gates
14	Laurel Marris	2009-2018- twice daily	Wide enough to walk along	Gate never locked- gates now sometimes locked	no	no	na	yes	Yes-letter- never locked gates until

No	Name	Period Of Use and Frequency	Width Of Route	Obstructions on Route	Signs on route	Challenged on route or received permission	Comments/other notes	Willing to attend PI or interview	Response to clarification letter	recently
16	Mrs Pat Adams	1970-today daily	Wide enough for pram	Gate now locked all the time	no	Told by rude lady after using path for years	Map is marked by star-no description-MAP NOW SUPPLIED.	yes	Yes-letter-never know gates locked	
17	Susan Fricker	1968-today - daily	Wide enough to pass another person	Gates always unlocked	no	Permission given by waltons in 1970s	Rude lady said gate locked-people weeing on her house- not sure of details of permission but was given	no	No response	
18	Mrs Mary Crockin	1963-present day daily-moved away for a time	Don't know	Gates now locked	no	no	Gate locked by resident- map marked by star-no description	yes	No response	
19	John Fricker	70s- this day daily/weekly	Wide enough for several ppl to pass	Gates always unlocked	no	Permission by waltons in 1970s- during A303 build was given permission- I believe a committee was formed	See permission column	no	No response	
20	Mavis Adams	1999-2017 weekly	Don't know	Gates never locked- years ago no gates-locked in 2017	no	no	Owners of flats said hello	no	No response	
21	Sandy Sams	1962-2017 daily		Gates now locked	no	no		yes	No response	
22	Nicholas Guy	3 times a week	6 ft to narrower	Open gates	no	no	Safer route than road	no	No response-do not know when Mr Guy used the route as did not fill in this section of form and has not responded to	

No	Name	Period Of Use and Frequency	Width Of Route	Obstructions on Route	Signs on route	Challenged on route or received permission	Comments/other notes	Willing to attend PI or interview	Response to clarification letter
23	Sally White	1960-1982 daily 1982-1992 weekly 1982-2018 daily	2 metres	Gates never locked	no	no		no	no
24	Graham Sams 2 nd form	1960-2017	-	Gates not locked until now	no	Arrogant woman told him not to go through unlocked gate	Safer route	yes	2 nd form from Mr Sams-differs from 1 st form
25	Ed D'Silva	- 2017-2019 daily	3 people wide	Gates never locked until now, but have been given a key	no	No- (but his wife has a key to the gate)	Safer route to use	yes	Received form too late for report-use appears to be with permission
26	Neil Wilson Barker	2017 to now(2019) daily	Don't know	When gates locked – 99% of time stopped me using the path	no	Yes from landlord in 2017. Was given key	Given key to use route as alternative is narrow road.	yes	Received form too late for report-use appears to be with permission

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Janice, please accept as a start -
 Submitted by MR CRATHAM SAMS.

A Mr Mike Taylor @ TIS BURY can clearly
 remember over 20 years, I am getting a
 statement from him, a Ex area Parish Councillor
 Ecce Jean Mose 07710 441 599

Janice Green,
 RIGHTS OF WAY OFFICER,
 WILTSHIRE COUNCIL,
 COUNTY HALL,
 BY THE SEA ROAD,
 TROCHOBIDGE,
 WILTS.
 BA14 8JN

TO WHOM IT MAY CONCERN

RE LOCKING OF WALTON'S PASSAGEWAY BETWEEN SALISBURY STREET AND NORTH STREET

Please lodge your complaint regarding the above.

Name: GRAHAM SAMS.

Address: 22 White Road mere.

Reason for complaint: I use this Access to Town

With my mum. in her wheelchair

as the pavement is too narrow on Waltons

corner and its not safe.

I have lived in Mere for 60 Years.

I request that the passageway be left unlocked to allow safer access to the shopping area.

Signed 

Date: 21/1/18

PLEASE RETURN THIS FORM TO

GEORGE JEANS, Jeans Electrical, Salisbury Street, Mere, Wiltshire, BA12 6HB

OR

George Jeans, MERE POST OFFICE.

THANK YOU.

TO WHOM IT MAY CONCERN

RE LOCKING OF WALTON'S PASSAGEWAY BETWEEN SALISBURY STREET AND NORTH STREET

Please lodge your complaint regarding the above.

Name: Sandy Sams

Address: 22 White Road
Mere, Wilts

Reason for complaint: We've always used this gateway
as a much safer passage into town, as it cuts out
Walton's corner, as it very dangerous with children
and pushchairs.

I have lived in Mere for 50+ Years.

I request that the passageway be left unlocked to allow safer access to the shopping area.

Signed [Redacted Signature]

Date: 21-1-18

PLEASE RETURN THIS FORM TO

GEORGE JEANS, Jeans Electrical, Salisbury Street, Mere, Wiltshire, BA12 6HB

OR

George Jeans, MERE POST OFFICE.

THANK YOU.

TO WHOM IT MAY CONCERN

RE LOCKING OF WALTON'S PASSAGEWAY BETWEEN SALISBURY STREET AND NORTH STREET

Please lodge your complaint regarding the above.

Name: Kelly Jayne Sams

Address: 12 Castle Hill Crescent, Mere,
Wiltshire BA12 6HL

Reason for complaint: I used to use this short cut as
I have a 3 year old & it's not safe walking
down the road between the bank & antique
shop, as the cars turn in so quickly & cutting
the corner.

I have lived in Mere for 30 Years.

I request that the passageway be left unlocked to allow safer access to the shopping area.

Signed 

Date: 31/1/18

PLEASE RETURN THIS FORM TO
GEORGE JEANS, Jeans Electrical, Salisbury Street, Mere, Wiltshire, BA12 6HB
OR
George Jeans, MERE POST OFFICE.
THANK YOU.

TO WHOM IT MAY CONCERN

RE LOCKING OF WALTON'S PASSAGEWAY BETWEEN SALISBURY STREET AND NORTH STREET

Please lodge your complaint regarding the above.

Name: GEORGE JEANS


Address: MERE POST OFFICE, SALISBURY ST., MERE WILTS, BA12 6HB

Reason for complaint: I AM THE WILTSHIRE COUNSELLOR WHO HAVE RECEIVED APPROXIMATELY 60 COMPLAINTS RE CUTTING OFF WHAT HAS BECOME THE MAIN PUBLIC FOOTPATH FROM THE SQUARE, MERE TO NORTH STREET, MERE

I have lived in Mere for 85 Years.

I HAVE WALKED THROUGH MERE AS A CHILD UNCHALLENGED HOWEVER SINCE THE MID 1990S I REQUEST THAT THE PASSAGEWAY BE LEFT UNLOCKED TO ALLOW SAFER ACCESS TO THE SHOPPING AREA.

OR EARLIER I KNOW THIS HAS BECOME A PUBLIC RIGHT OF WAY UNCHALLENGED

Signed: 

Date: 20/2/2018

PLEASE RETURN THIS FORM TO
GEORGE JEANS, Jeans Electrical, Salisbury Street, Mere, Wiltshire, BA12 6HB
OR
George Jeans, MERE POST OFFICE.
THANK YOU.

TO WHOM IT MAY CONCERNRE LOCKING OF WALTON'S PASSAGEWAY BETWEEN SALISBURY STREET AND NORTH STREET

Please lodge your complaint regarding the above.

Name: SEAN GARDNER

Address: 3 GRANGE COTTAGES
MERE, BA12 6HJ

Reason for complaint: I NOW HAVE TO WALK DOWN MANOR ROAD

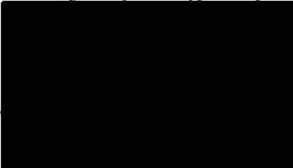
TO USE THE SHOPS IN MERE. MANOR ROAD IS A SINGLE

WIDTH ROAD WITH NO PAVEMENTS & IS THEREFORE

VERY DANGEROUS FOR PEDESTRIANS

I have lived in Mere for 4 Years.

I request that the passageway be left unlocked to allow safer access to the shopping area.

Signed: 

Date: 11 JAN. 18.

TO WHOM IT MAY CONCERN

RE LOCKING OF WALTON'S PASSAGEWAY BETWEEN SALISBURY STREET AND NORTH STREET

Please lodge your complaint regarding the above.

Name: J & R BERRY

Address: "THE BEEHIVE"
CASTLE HILL CRESCENT MERE

Reason for complaint: The gate has not been locked
for as long as we remember. It is a
short cut away from Waltons corner for
us especially when pushing pushchairs

I have lived in Mere for 60-70 years.

I request that the passageway be left unlocked to allow safer access to the shopping area.

Signed 

Date: 20.1.18

PLEASE RETURN THIS FORM TO

GEORGE JEANS, Jeans Electrical, Salisbury Street, Mere, Wiltshire, BA12 6HB

OR

George Jeans, MERE POST OFFICE.

THANK YOU.

TO WHOM IT MAY CONCERN

RE LOCKING OF WALTON'S PASSAGEWAY BETWEEN SALISBURY STREET AND NORTH STREET

Please lodge your complaint regarding the above.

Name: LEE BERRY

Address: 18 Castle hill cres, MERE,
WILTS

Reason for complaint: Always used this entrance
to enter town as road between
Waltons & Bent is very narrow &
dangerous when walking to town with children.

I have lived in Mere for ~~.....~~ Years. ALL MY LIFE!!

I request that the passageway be left unlocked to allow safer access to the shopping area.

Signed 

Date: 20-1-18

PLEASE RETURN THIS FORM TO

GEORGE JEANS, Jeans Electrical, Salisbury Street, Mere, Wiltshire, BA12 6HB

OR

George Jeans, MERE POST OFFICE.

THANK YOU.

TO WHOM IT MAY CONCERN

RE LOCKING OF WALTON'S PASSAGEWAY BETWEEN SALISBURY STREET AND NORTH STREET

Please lodge your complaint regarding the above.

Name: SANNY WHITE

Address: 3 OLD HOLLOW, MERE, WILTS

Reason for complaint: Have always used the entrance to and from town,

I have lived in Mere for 57 Years. was born here!!

I request that the passageway be left unlocked to allow safer access to the shopping area.

Signed ... 

Date: 22.1.18.

PLEASE RETURN THIS FORM TO

GEORGE JEANS, Jeans Electrical, Salisbury Street, Mere, Wiltshire, BA12 6HB

OR

George Jeans, MERE POST OFFICE.

THANK YOU.

TO WHOM IT MAY CONCERN

RE LOCKING OF WALTON'S PASSAGEWAY BETWEEN SALISBURY STREET AND NORTH STREET

Please lodge your complaint regarding the above.

Name: ANDREW HOUGHTON

Address: 12 CASTLE HILL CRESCENT
MERE BA126HL

Reason for complaint: I WALK MY 3 CHILDREN DOWN
TO TOWN FREQUENTLY + I FIND ITS
NOT SAFE TO DO SO ANYMORE, I
FEAR FOR THEIR SAFETY,

I have lived in Mere for 2 Years.

I request that the passageway be left unlocked to allow safer access to the shopping area.

Signed 

Date: 30/1/18

PLEASE RETURN THIS FORM TO

GEORGE JEANS, Jeans Electrical, Salisbury Street, Mere, Wiltshire, BA12 6HB

OR

George Jeans, MERE POST OFFICE.

THANK YOU.

TO WHOM IT MAY CONCERN

RE LOCKING OF WALTON'S PASSAGEWAY BETWEEN SALISBURY STREET AND NORTH STREET

Please lodge your complaint regarding the above.

Name: MIS MAUIS ADAMS

Address: 8. ~~A~~ Castle Hill Crescent
MERE

Reason for complaint: I find it very dangerous

to walk down between the Waltons Old

Building and the Bank Building as

I have a three wheel walker

I have lived in Mere for 60 Years.

I request that the passageway be left unlocked to allow safer access to the shopping area.

Signed 

Date: 22.1.18

Please return to
George Jeans at
The Post Office
Thank you.

TO WHOM IT MAY CONCERNRE LOCKING OF WALTON'S PASSAGEWAY BETWEEN SALISBURY STREET AND NORTH STREET

Please lodge your complaint regarding the above.

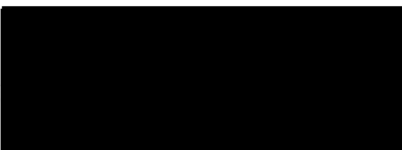
Name: Mrs Joyce Cleedy

Address: "Rose Cottage" North St. Clevedon
Warrminster Wiltshire BA12 6HH

Reason for complaint: It has been a right of way ever since I've lived here. It is also the safest and easiest way to the shops, and as an elderly person I appreciate this very much.

I have lived in Mere for 44 Years.

I request that the passageway be left unlocked to allow safer access to the shopping area.

Signed 

Date: 12/01/2018

Please return to
George Jeans, or
The Post Office.
Thank you.

TO WHOM IT MAY CONCERNRE LOCKING OF WALTON'S PASSAGEWAY BETWEEN SALISBURY STREET AND NORTH STREET

Please lodge your complaint regarding the above.

Name: Mr & Mrs. D'Silva

Address: Walton Cottage, North St, Mere BA12 6HU

Reason for complaint: By locking the gate, we are forced to go around and use a road where there is very little pavement which runs out to nothing. This road is badly lit if at all and my wife and I have been only narrowly missed by cars and large vans (Health & Safety)!

Also, in very inclement weather it is most uncomfortable fumbling around for keys and then feeling with numb fingers for the keyhole because of inadequate lighting in the passage. Wheelchair users have told me of their total discomfort and even danger having to negotiate the side road where there is no pavement at all and all the more dangerous at night. (no pavement and badly lit!).

Generally, safe access to the High Street is denied us by locking the gate. By us I mean disabled, mothers and prems and small children.

I have lived in Mere for 1 Years.

Also when purchasing Walton Cottage we were told that we could easily access the Coop in the High Street via the gate. It was one of the factors in purchasing Walton Cottage.

I request that the passageway be left unlocked to allow safer access to the shopping area.

Signe

Date: 12 Jan. 2018

TO WHOM IT MAY CONCERNRE LOCKING OF WALTON'S PASSAGEWAY BETWEEN SALISBURY STREET AND NORTH STREET

Please lodge your complaint regarding the above.

Name: Claine Lisette du Cros

Address: 2 Manor Road Mere. BA12 6HY

Reason for complaint: I live in the Midob Bungalow on the Green. From my front door to the Co-op is a direct line through the passageway. I am 78, & also walk my Labrador. I now have to use the road between Walters & the Playas Bank. This has no pavement full way along, it is narrow, I have had many runs to flatten me & nearly against the wall to let traffic pass. This is an accident waiting to happen.

I have lived in Mere for 3 1/2 Years.

July 2014.

I request that the passageway be left unlocked to allow safer access to the shopping area.

Signed

Date:

12th January 2017.

TO WHOM IT MAY CONCERNRE LOCKING OF WALTON'S PASSAGEWAY BETWEEN SALISBURY STREET AND NORTH STREET

Please lodge your complaint regarding the above.

Name: PAT + JENNY SEWARD

Address: OLD FORGE NORTH STREET MERE.
WARMINSTER, WILTS BR12 6HH

Reason for complaint: We are both over eighty and find
walking down the road very dangerous because
there is no proper path, and we are both a
bit wobbly on our legs.

We have lived in Mere for 18 Years.

We request that the passageway be left unlocked to allow safer access to the shopping area.

Signed



Date: 14-1-2018

TO WHOM IT MAY CONCERNRE LOCKING OF WALTON'S PASSAGEWAY BETWEEN SALISBURY STREET AND NORTH STREET

Please lodge your complaint regarding the above.

Name: Mrs Laurel Marris

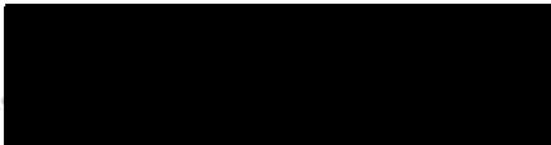
Address: Wisteria Cottage, 3 Castle Hill Crescent
BA12 6JD

Reason for complaint: The alternative road is very narrow with only a narrow, short footpath. Vehicles pass up and down alternately, one must flatten oneself against the wall. There is a very dim light - often no light. It is dangerous during the day for mothers + pushchairs, invalids with buggies, I have 2 labradors and cannot walk down to The Meads. At night it is VERY dangerous indeed. It has always been unlocked until recently

I have lived in Mere for 9 Years.

I request that the passageway be left unlocked to allow safer access to the shopping area.

Signed



Date: Feb 21st 2018

PLEASE RETURN THIS FORM TO

GEORGE JEANS, Jeans Electrical, Salisbury Street, Mere, Wiltshire, BA12 6HB

OR

George Jeans, MERE POST OFFICE.

THANK YOU.

TO WHOM IT MAY CONCERN

RE LOCKING OF WALTON'S PASSAGEWAY BETWEEN SALISBURY STREET AND NORTH STREET

Please lodge your complaint regarding the above.

Name: MR C BRECKELL

Address: FORGE COTTAGE, NORTH STREET,
MERE WILTS BA12 6NH

Reason for complaint: HAVING TO WALK DOWN MANOR ROAD CAN

BE EXTREMELY DANGEROUS PARTICULARLY FOR THE ELDERLY

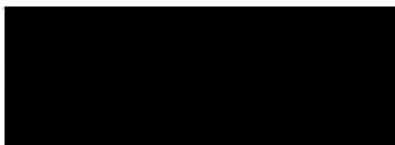
AND MOTHERS WITH PUSHCHAIRS AS THERE IS NO ADEQUATE

PAVEMENT. HUGE LORRIES AND FARM VEHICLES DO NOT HELP EITHER

I have lived in Mere for 5 Years.

I request that the passageway be left unlocked to allow safer access to the shopping area.

Signed



Date: 11/1/18

Please return to
George Jones of
The Post Office.
Thank you.

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Officers Opinion on Late Correspondence- Mere 78 DMMO

Photo of The Square, Mere , 1928.

This photo depicts the metal gates at the south end of the order route in 1928, with one of the gates being open. This photo is dated 1928 and as such would fall outside of the relevant 20 year period for consideration under s.31 of The Highways Act 1980.

Email from Leaping Frogs Nursery

The email from Leaping Frogs Nursery claims use of the route through gates from 2002 by some individuals to an unknown date. This email does not form a statement and the nature of use claimed has not been investigated by officers, i.e., if that use was as of right or by right, the frequency of use, the period of use, the precise route used, or if that use was interrupted or challenged at any time. This claimed use can be further examined at a future public inquiry.

This correspondence, the email and photo, will be sent as part of the papers of this case to The Planning Inspectorate for consideration. At a future public inquiry an independent inspector will have the opportunity to analyse and cross examine all the evidence given and offer the opportunity for any person to give oral evidence. The inspector will then be able to reach a decision to confirm or not confirm this order.

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From: xxxxxxxx
Sent: 11 September 2019 21:50
To: Jeans, George <George.Jeans@wiltshire.gov.uk>
Subject: Re: Alley way

Dear George,

In response to your email, I am happy for my original email below which I sent to you on 10th September, regarding the Alley way next to The Walton Building in Mere to be shared with Lisa Moore, Wiltshire Councils officer and with the committee.

Also, after looking further at my paperwork and remembering back to our lease at The Walton Building in Mere. I can confirm that Leaping Frogs leased The Walton Building until 2006 not 2008 which I mentioned to you before.

Please let me know if I can help in any other way.

Best wishes

Victoria's Oram
Leaping Frogs Day Nursery CIC

From: xxxxxx
Sent: 10 September 2019 15:03
To: Jeans, George <George.Jeans@wiltshire.gov.uk>
Subject: Alley way

Dear George,

Please share this with Craig Harlow at Wiltshire Council.

I am writing this email to confirm that when Leaping Frogs first rented The Walton Building in Mere in 2002 and during the time of our rental period the gates to the walk way / pathway from the high street to the back of the building was not locked. Local people were able to walk through at their leisure. Miss Donna Kelly who also works at Leaping Frogs now had children attending the nursery at the time and agrees that the gates were kept unlocked and remembers walking with her children this way because it was too dangerous to walk with them along the road next to the old Lloyds bank building.

If you require any other information please contact me.

Best wishes

Victoria Oram
Leaping Frogs Day Nursery CIC

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Wiltshire Council
Southern Area Planning Committee
19th September 2019

Planning Appeals Received between 17/05/2019 and 06/09/2019

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Start Date	Overturn at Cttee
16/00383/ENF	Nightwood Farm, West Grimstead, Salisbury, SP5 3RN	GRIMSTEAD	Unauthorised development	DEL	Written Representations	-	21/08/2019	No
18/01942/OUT	Land SW of Middleton Road, Winterslow Wiltshire, SP5 1RU	WINTERSLOW	Outline application (all matters reserved except access) to erect up to 22 market dwellings, 9 affordable dwellings, and 4 elderly bungalows; provide a new access from Middleton Road and pedestrian footpath alongside Middleton Road; provide circa 4,500m ² of public open space including 'LAP' children's play area, ecological buffer to Browns Copse, and drainage detention basin (resubmission of application 17/02002/OUT).	DEL	Written Representations	Refuse	01/07/2019	No
18/03678/FUL	4A & 4B The Crescent Hill View Road Salisbury, SP1 1HY	SALISBURY CITY	Reversion of 4A and 4B The Crescent to a single dwelling including side/rear extension with parking.	SAPC	Written Representations	Approve with Conditions	31/07/2019	Yes
18/03830/FUL	Shrewton House Elston Lane, Shrewton SP3 4HJ	SHREWTON	Formation of access in curtilage wall of former Orchard to Elston Lane	DEL	Written Representations	Refuse	30/07/2019	No
18/04184/LBC	Shrewton House Elston Lane, Shrewton SP3 4HJ	SHREWTON	Formation of access in curtilage wall of former Orchard to Elston Lane	DEL	Written Representations	Refuse	30/07/2019	No
18/08737/FUL	Land South of Forest View, Clay Street Whiteparish, Salisbury Wiltshire	WHITEPARISH	Two new dwellings.	DEL	Written Representations	Refuse	21/05/2019	No
18/08974/CLE	Whitebridge Farm Holidays Whitebridge Farm Sedgehill, Shaftesbury Dorset, SP7 9JT	SEEDGEHILL & SEMLEY	Certificate of Lawfulness for Existing Use - Use of Swallow Cottage as a residential dwelling house	DEL	Written Representations	Refuse	21/08/2019	No
18/09167/CLE	Whitebridge Farm Sedgehill, Shaftesbury Dorset, SP7 9JT	SEEDGEHILL & SEMLEY	Certificate of Lawfulness for Existing Use - Use of Linney Cottage as a residential dwelling house	DEL	Written Representations	Refuse	21/08/2019	No
18/11273/FUL	2 Duchy Cottages North Road, Mere BA12 6HG	MERE	Proposed two-storey rear extension.	DEL	House Holder Appeal	Refuse	17/06/2019	No
19/00220/FUL	Travellers Rest Carmelite Way Salisbury, SP1 2HL	SALISBURY CITY	Demolition of the existing building and construction of five houses with associated parking and access	DEL	Written Representations	Refuse	23/07/2019	No
19/01251/FUL	Land Adjacent South Lea, Tytherley Road Winterslow, Salisbury Wiltshire, SP5 1PZ	WINTERSLOW	Proposed 2 bedroom bungalow and associated works	DEL	Written Representations	Refuse	09/07/2019	No

Planning Appeals Decided between 17/05/2019 and 06/09/2019

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Decision	Decision Date	Costs Awarded?
17/01798/FUL	Valley View, Dean Road East Grimstead Salisbury, Wiltshire SP5 3SD	GRIMSTEAD	Change use of land for the stationing of one mobile home, one touring caravan, and a day/utility room building for residential purposes, together with the formation of hardstanding, and landscaping and erection of maximum 2.8 fence (retrospective)	DEL	Hearing	Approve with Conditions	Allowed with Conditions	13/08/2019	Appellant Applied for Costs – PARTIAL ALLOWED
18/00457/FUL	Land at Court Farm Court Farm Lower Woodford SP4 6NQ	WOODFORD	Energy Storage Capacity Mechanism Plant to Support the National Grid	SAPC	Written Reps	Approve with Conditions	Dismissed	17/06/2019	None
18/07786/FUL	Land adjacent to Wagtails Southampton Road Alderbury, Wiltshire SP5 3AF	ALDERBURY	Revised layout to planning permission 16/04775/FUL to allow for two additional dwellings.	SAPC	Written Reps	Refuse	Dismissed	08/08/2019	None
18/08737/FUL	Land South of Forest View, Clay Street Whiteparish, Salisbury Wiltshire	WHITEPARISH	Two new dwellings.	DEL	Written Reps	Refuse	Allowed with Conditions	20/08/2019	Appellant Applied for Costs – REFUSED
18/08798/PNCOU	Pear Tree Farm, Pitton Salisbury, Wiltshire SP5 1EG	PITTON & FARLEY	Notification for Prior Approval under Class Q - Change of Use of Existing Agricultural Buildings to Form Two Dwellings (Use Class C3) and Associated Operational Development	DEL	Written Reps	Refuse	Dismissed	14/08/2019	None
18/09960/FUL	Clyde Cottage, The Common, Winterslow Salisbury, Wiltshire SP5 1PJ	WINTERSLOW	Construction of one pair of semi-detached dwellings with associated parking	DEL	Written Reps	Refuse	Dismissed	13/08/2019	None
18/10448/FUL	Land adjacent to Wagtails Southampton Road Alderbury, Salisbury Wiltshire, SP5 3AF	ALDERBURY	Revised layout application with two additional dwellings following refusal of 18/07786	DEL	Written Reps	Refuse	Allowed with Conditions	08/08/2019	None
18/11273/FUL	2 Duchy Cottages North Road, Mere BA12 6HG	MERE	Proposed two-storey rear extension.	DEL	House Holder Appeal	Refuse	Allowed with Conditions	23/07/2019	None
18/11603/FUL	Thenford, The Street Kilmington, BA12 6RG	KILMINGTON	Erection of a detached 3-bedroom cottage within the curtilage of 'Thenford'.	DEL	Written Reps	Refuse	Dismissed	28/08/2019	None
18/12012/FUL	Plot 2, Former 12 Tidworth Road, Porton SP4 0NG	IDMISTON	Proposed Car Barn - Plot 2	DEL	Written Reps	Refuse	Dismissed	24/07/2019	None

REPORT OUTLINE FOR AREA PLANNING COMMITTEES Report No.

Date of Meeting	19 th September 2019
Application Number	19/05178/FUL
Site Address	Rowdens Farm, Bunny Lane, Sherfield English, Romsey, Wiltshire SO516FT
Proposal	Demolish black barn and rebuild using brick and cladding to create annexe within curtilage of Rowdens Farm house.
Applicant	Head Bros. Rowdens Farm
Town/Parish Council	Whiteparish Parish Council
Electoral Division	Aldbury and Whiteparish, Cllr Richard Britton
Grid Ref	
Type of application	Full
Case Officer	Mrs. Becky Jones

Reason for the application being considered by Committee:

Cllr. Britton has called the application to committee to be determined if recommended for approval by officers, on the following grounds:

- This is considered to be a new dwelling in open countryside and outside the settlement boundary

1. Purpose of Report

To consider the above application and the recommendation of the Area Development Manager that planning permission be approved.

2. Report Summary

The main planning issues to consider are:

1. Principle of development and the issue of an annexe or a separate dwelling
2. Siting, scale, design, materials and impact on the landscape character of the Special Landscape Area
3. Neighbouring amenity and public protection
4. Ecology
5. Impact on highway safety

The application generated 1 letter of objection from Whiteparish Parish Council on the grounds that it is considered to be a new dwelling in the countryside.

3. Site Description and Proposal

Black barn is a timber framed outbuilding located within the garden courtyard area serving Rowdens Farm house. Agricultural buildings are located nearby, but the black barn opens into the courtyard and parking area and is currently used for domestic storage. The west side of the barn appears to have a separate internal dividing wall and opens onto the farm track. This side of the barn houses some agricultural goods and timber.

There are no listed buildings in the vicinity. The farm and its associated buildings lie within the countryside of the Special Landscape Area. The site has a Grade 3 Agricultural Land

Classification and is within Flood Zone 1. Bunny Lane to the south of the farm complex is an adopted, unclassified road. A public footpath WHIT 24 runs to the north of the site.

The applicant is proposing to demolish the existing black barn structure and its lean to and replace it with a new brick structure to create an annexe. The annexe would share the existing access, parking area and garden for Rowdens Farm house.

Planning History:

73/EY/478 Erection of agricultural worker's dwelling house and garage. **Approved subject to conditions:**

Conditions :

1. The occupation of the dwelling shall be limited to a person solely or mainly employed or last employed in the locality in agriculture as defined in Section 290(1) of the Town and Country Planning Act, 1971 or in forestry (including any dependents of such a person residing with him) or a widow or widower of such a person.
2. The existing cottages shall be demolished and removed not later than 6 months from the date of the occupation of this dwelling.

Reasons :

1. The dwelling is permitted only on the basis of its agricultural need.
2. In order to secure satisfactory re-development.

18/11051/PNCOU Notification for Prior Approval under Class Q - Develop Agricultural Barn into Living Accommodation as One Dwelling (Use Class C3) and Associated Operational Development **Withdrawn (officer note – the building was considered unlikely to comply with the provisions of Class Q due to its domestic storage use)**

4. National and Local Planning Policy

National Planning Policy Framework (NPPF 2019) and National Planning Practice Guidance NPPG

Wiltshire Core Strategy (WCS) adopted Jan 2015:

- CP1: Settlement Strategy
- CP2: Delivery Strategy,
- CP31: Warminster Community Area
- CP48: Supporting Rural Life
- CP51: Landscape
- CP57: Design
- CP60: Sustainable Transport
- CP61: Transport and Development
- Saved Policy C6 Special Landscape Area
- Saved Policy C2 Extensions and additions to buildings in the countryside
- Saved Policy H33 Accommodation for dependant persons (Saved in Annexe D of WCS)

The Conservation of Habitats and Species Regulations 2010, Circular 06/2005

EC Habitats Directive when as prescribed by Regulation 3(4) of the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended).

5. Summary of consultation responses

Conservation: no comment

Highways: No objection

Public Protection: No objection subject to contamination condition

Ecology: No objection subject to a scoping bat survey condition

Archaeology: No further archaeological recommendations

Wessex Water: no objection

6. Publicity

The application was advertised by site notice and neighbour consultation. No third party letters were received.

7. Planning Considerations

Planning permission is required for the development. The applications must be determined in accordance with the development plan unless material considerations indicate otherwise. (Section 70(2) of the Town and Country planning Act and Section 38(6) of the Planning and Compensation Act 2004). The NPPF is also a significant material consideration and due weight should be given to the relevant policies in existing plans according to their degree of consistency of the framework. (Paragraph 215 at Annex 1). The NPPF confirms in para 11 that plans and decisions should apply a presumption in favour of sustainable. For decision making, that means approving development proposals that accord with an up-to-date development plan without delay.

7.1 Principle of development and the issue of an annexe or a separate dwelling

Settlement Strategy: The Settlement Strategy (Core Policy 1) identifies the settlements where sustainable development will take place to improve the lives of all those who live and work in Wiltshire. The site lies in the countryside outside any settlement boundary.

Delivery Strategy: The Delivery Strategy set out in Policy CP2 states that other than in circumstances as permitted by other policies within this Plan, identified in paragraph 4.25, development will not be permitted outside the limits of development. The limits of development may only be altered through the identification of sites for development through subsequent Site Allocations Development Plan documents and neighbourhood plans.

However, the proposal relates to an existing domestic outbuilding within the curtilage of an existing agricultural worker's dwelling, which in turn, lies within a farm complex, accessed from a private drive and through a gateway. The proposal seeks to replace the existing outbuilding with a new structure. Access and curtilage including garden space would be shared.

New residential development in the countryside is generally resisted by local and national planning policies. However, the proposal is for a residential annexe to serve Rowdens Farm house and officers understand that it is intended to accommodate family members/parents (or dependants). This would be compatible with the original condition 1 for the agricultural worker's dwelling, which permits occupation of Rowdens Farm house by dependants of agricultural workers. Therefore, the *principle* for this development can be considered under two relevant policy strands:

- i) Saved Policy H33 for annexed accommodation
- ii) Saved policy C24 and H31 for residential buildings and extensions in the countryside.

CP48 cannot be applied to this proposal as it seeks conversion and re-use of existing rural buildings. This proposal seeks to demolish and rebuild an ancillary building on the site of the existing black barn and use it as an annexe to provide ancillary residential accommodation.

Therefore, the key test is whether the building continues to perform an *ancillary* function to the main dwelling i.e. shares some of the facilities with the main dwelling (such as access, amenity space and parking). This would ideally take the form of a suitable extension to the main dwelling. However, in this case, the potential to extend the house would appear to be constrained by the adjacent farmland and the garden.

The policy for the replacement and modest "enlargement" of the black barn (or any future replacement building) may be considered under Policy C24 as a new addition to the residential curtilage. It states:

Extensions to Buildings

C24 Extensions and additions to buildings in the countryside will only be permitted if they are sympathetic in scale and character with the existing building and surroundings, and fall within the existing curtilage.

The building would lie on the footprint of the existing black barn, which is within the existing residential curtilage.

The proposed annexe use may be considered under saved Policy H33 (iv):

Accommodation for Dependent Persons

H33 Proposals to create separate units of accommodation for dependent persons will be permitted provided that either:

- (i) the accommodation is created wholly or partly within the existing dwelling or takes the form of an extension to that dwelling;*
 - (ii) the design and internal arrangement of the proposed unit of accommodation would allow it to be re-absorbed into the main dwelling when it is no longer required to house a dependent person; and*
 - (iii) where an extension is proposed, its siting and design is acceptable and the remaining external space around the building is adequate*
- or,*
- (iv) the accommodation is created as a result of a conversion of an existing building within the curtilage of the main dwelling; and*
 - (v) is subject to a restrictive occupancy condition or, if outside a Housing Policy Boundary, Housing Restraint Area, Special Restraint Area or New Forest Housing Policy Area, is subject to the applicant entering into a legal agreement with the Local Planning Authority that the ancillary accommodation will not be let or sold separately from the main dwelling.*

The policy generally refers to the conversion of an existing building **within the curtilage** of the main house. The building would then be tied by condition to the main house, to prevent it from being separated (sold or let) or the planning unit divided.

Therefore, the provision of a replacement building on the site of the black barn to provide ancillary accommodation in the form of an annexe would be acceptable *in principle* on this site in policy terms, provided it is tied by a restrictive condition to the main dwelling and subject to the detailed considerations of the development plan.

Annexe or new dwelling?

The matter of whether or not the accommodation would comprise an “annexe or a “new dwelling” has been deemed by the courts to be a matter of *fact and degree* for the decision maker.

The case of **Uttlesford District v Secretary of State for the Environment 1991** has determined that one dwelling can be ancillary to another. There is no requirement for the occupiers of an annexe to share part of the accommodation in the main house and provided the LPA is happy with an annexe in all other policy matters, they may impose a condition or require a legal agreement to ensure that the accommodation remains ancillary to the house.

Whether or not the accommodation should be considered as an annexe very much depends on the level of supporting information and justification given by the applicant, the scale, location and inter-relationship of the annexe building with the main property, and other material considerations such as landscape impact and highway safety. Other factors for Members to consider include:

- Appeals experience in Wiltshire indicates that PINS/Inspectors are not supportive of refusals on grounds that annexes are tantamount to a separate dwelling and believe any concerns in that respect can be adequately controlled through the standard condition restricting occupancy.
- Stand-alone new builds need to be clearly well related in layout to the principle dwelling - not lending themselves to separation;
- No separate accesses;
- no separate residential curtilage;
- a layout and configuration that would not be acceptable as two separate dwellings due to inadequate amenity (privacy/overlooking);
- the quantity of independent accommodation to be provided and need for such accommodation
- Most importantly clearly defined and detailed familial link between the applicant/occupants of the principle dwelling and the intended occupants of the annexe. Tied into this is a clearly expressed need for the "dependents" to reside at the site.

The appeal examples in the Appendices to this report show how this has been interpreted by Inspectors. Their decisions reflect the level of familial information submitted in support of applications and also an assessment of the *Uttlesford District* decision. At Woodpeckers,

Whiteparish, 16/11152/FUL (APP/Y3940/W/17/3167856) in **Annexe 1**, the Inspector dismissed the appeal, concluding:

8. Accommodation for a dependant person or persons is normally associated with shared facilities of some kind. In this case access to the site would be shared and there would be no separate garden to serve the proposed dwelling. Nonetheless, the substantial size of the proposed accommodation would be not far short of that in the main dwelling. It would provide for completely separate and independent living some distance from the main house, and on this basis it would effectively be a separate planning unit.

9. In these circumstances it would be inappropriate to restrict the occupancy of a conversion of this size by a condition or a legal agreement as this would not meet required tests of precision, reasonableness or enforceability. The Council have highlighted in their evidence a similar situation where an appeal¹ for the removal of a planning obligation was allowed because the accommodation was capable of functioning as a separate unit, as is the case here.

However, the application at Mortons, Hankerton, MALMESBURY, APP/Y3940/W/15/3003246 (14/08416/FUL) in **Annexe 2** required the replacement of three outbuildings with a new 2 storey building in the countryside. The Inspector stated:

5. The proposed building would be two storeys in height and would include two bedrooms, a kitchen, living room, a ground floor toilet and a first floor shower room and toilet. It would have all of the facilities to enable independent day to day living however it has been very clear through the processing of the planning application and this appeal that it would be intended for ancillary purposes. The Council considers that there is insufficient physical connection between the dwelling and the site. If the proposal were for a separate dwelling, this location within the countryside would be unacceptable as it would not comply with the exceptions allowing such development as set out in LP policy H4, CS policy 48 or paragraph 55 of the NPPF.

6. I have not had any particular policy drawn to my attention that indicates that annexes have to be physically linked to the primary accommodation. I am content that the proposed position relates well to the domestic garden and overall use of the site for a single household. A planning condition as suggested by the appellant would ensure use remains ancillary to the main house and not an independent dwelling. If that condition were subsequently breached, the Council could consider taking enforcement action to secure compliance.

He also considered the large size of the annexe:

*7. In terms of the need for such a large annex, I can understand why the Council may be sceptical. However, the existing dwelling whilst including 4 first floor bedrooms and a bedroom on the ground floor has a layout which does not allow much privacy. The appellant's wife has a form of dementia and both of them are in their 70's. They have 4 adult children one of whom has two children and I can understand that there is likely to be the ongoing need for regular visits. At the same time, there may also be a need for quiet relaxation during visits. Having a degree of separation would allow for a much more comfortable experience for the whole family during such visits. **These personal circumstances are not, in my experience, unusual.***

At Blakeney's, The Street, West Knoyle, Appeal Ref: APP/Y3940/D/17/3166866 (16/07534/FUL) in **Annexe 3**, the Inspector considered whether the proposal would create a separate dwelling (Uttlesford District case) and also, why a condition was suitable instead of a legal agreement:

Whether the proposal would create a separate dwelling

3. *The proposed dwelling would provide all of the facilities necessary to enable occupiers to live wholly independently of the house at Blakeney's. However, this on its own is not conclusive as the judgement in Uttlesford DC v Secretary of State for the Environment & White [1992] makes clear – it is a matter of fact and degree. The appellant has explained in her grounds of appeal that the building is intended to be occupied by her son, who has special needs, enabling him to live as part of the family but with a degree of independence. The proposed dwelling would share the same access as the main dwelling, and there would be no separate curtilage. It would be very much smaller than the main house, and would be fairly close to it.*

4. Whilst I recognise that the building could be used as a separate dwellinghouse wholly independent of Blakeney's, on the basis of the evidence before me, I consider that it could be realistically occupied as an annex, and in such circumstances it would be appropriate to prevent separate occupation by means of a condition limiting occupation for purposes ancillary to the residential use of the main dwelling.

5. *Wiltshire Core Strategy (CS) Policy H33 deals with accommodation for dependent persons and provides that such proposals will be permitted in circumstances which include where the accommodation is created as a result of a conversion of an existing building within the curtilage of the main dwelling. A further criterion is that the occupation of the accommodation should be subject to a restrictive occupancy condition or, if outside a Housing Policy Boundary, Housing Restraint Area, Special Restraint Area or New Forest Housing Policy Area, is subject to the applicant entering into a legal agreement.*

6. *The proposal would be outside of the specific locations referred to in the policy, and thus the policy would require a legal agreement to be entered into. However, a condition would have the same effect as a legal obligation, and I see no reason as to why such control would not be effective in the same manner. Thus, the proposal would comply with the permissive approach of Policy H33, if not with the letter of the policy.*

The Black Barn

Officers have considered this application on its own merits and have concluded that it meets the criteria for consideration as an annexe and could be suitably conditioned as such under H33.

Family need and quantity of accommodation - The Black Barn is intended for family use, for parents of the applicants, as set out in the applicant's letter. The accommodation is sufficient to enable visitors and in future, a carer to reside, if this is required. In the meantime, the family are likely to be active in helping on the farm, and the boot/utility room is intended to make this convenient for washing etc. The building does not exceed the existing footprint of the barn.

Existing Curtilage - Drawing AA shows that the replacement building directly relates to the existing footprint of the barn and, falls within the existing residential curtilage.

Acceptability of layout – the relationship between the annexe and the main house is considered to be acceptable. Whilst there is intervisibility between the two buildings, existing amenities would not be adversely affected.

No new access or entry point - Furthermore, it can be noted from drawing C that entry to the annexe is proposed from the existing parking courtyard, shared with the main house. There is no proposed entrance or doorway on the west elevation facing the farm track.

Furthermore, the existing residential curtilage is sited within an enclosed area *within* the farmyard which in turn, is accessed via a private, gated driveway.

It would therefore be highly impractical and undesirable to split the curtilage into two in future, and any future “private” occupiers of the black barn would need to obtain a separate means of access and amenity space for the accommodation. Clearly, anyone not associated with the farm would have to be prepared to live in close proximity to animals, machinery and farm activity on a daily basis. Therefore, this accommodation would not easily lend itself to being separated from the farm house and would more conveniently remain as “ancillary” for family use associated with the farm, as proposed.

7.2 Siting, scale, design, materials and impact on the character of the countryside and Special Landscape Area

Saved Policy C6 sets out the criteria for development in the Special Landscape Area and states:

C6 Within the Special Landscape Area, proposals for development in the countryside will be considered having particular regard to the high quality of the landscape. Where proposals which would not have an adverse effect on the quality on the landscape are acceptable, they will be subject to the following criteria;

- (i) the siting and scale of development to be sympathetic with the landscape; and*
- (ii) high standards of landscaping and design, using materials which are appropriate to the locality and reflect the character of the area.*

The policy needs to be read in conjunction with C24 and H33 for this proposal.

Scaled drawings of the existing barn elevations and the proposed elevations for the new building have been submitted and these show that

- the existing ground to ridge height of black barn is about 5.2m and the proposed height of the replacement building would be 5.5m
- the existing length and width of black barn is 9.4m and 9.2m respectively and the proposed length and width of the replacement building would be 9.5m and 9m respectively.

Therefore, the development represents only a modest increase in the dimensions of the building on site and there would be some increase in the bulk of the building created by the dormer and balcony (replacing the existing flat roof lean to). The proposed materials of brick, grey slate and timber cladding are all acceptable within the context of the adjacent farm buildings and farm house.

It is concluded that the scale and appearance of the new building is sympathetic with the existing one it replaces and would not harm the character of the area, in accordance with C24 and C6(i) and (ii).

7.3 Neighbouring amenity and public protection

Core Policy 57 sets out the general principles for the design of development, including impacts on neighbours. It states:

A high standard of design is required in all new developments, including extensions, alterations, and changes of use of existing buildings. Development is expected to create a strong sense of place through drawing on the local context and being complimentary to the locality. Applications for new development must be accompanied by appropriate information to demonstrate how the proposal will make a positive contribution to the character of Wiltshire through:

vii. Having regard to the compatibility of adjoining buildings and uses, the impact on the amenities of existing occupants, and ensuring that appropriate levels of amenity are achievable within the development itself, including the consideration of privacy, overshadowing; vibration; and pollution (such as light intrusion, noise, smoke, fumes, effluent, waste or litter).

The public protection team have previously responded:

The photographs show a tank to the left of the barn, at this stage we have no information on whether the stored chemicals/oil is for domestic or agricultural use. We would therefore recommend the following condition is attached to any full application approval to ensure the site is adequately investigated for any contaminated land;

1. No development shall commence on site until an investigation of the history and current condition of the site to determine the likelihood of the existence of contamination arising from previous uses has been undertaken and until:

a) The Local Planning Authority has been provided with written confirmation that, in the opinion of the developer, the site is likely to be free from contamination which may pose a risk to people, controlled waters or the environment. Details of how this conclusion was reached shall be included.

b) If, during development, any evidence of historic contamination or likely contamination is found, the developer shall cease work immediately and contact the Local Planning Authority to identify what additional site investigation may be necessary.

The owner has written in a statement confirming that the tank to the left is a bunded gas oil fuel tank which would be relocated. He states: "I can confirm that there is no history of the existence of contamination arising from any previous activities over the last 30 years." This statement is considered to satisfy criteria (a) above and criteria (b) would still apply.

The proposed annexe is sufficiently remote from other neighbouring properties to ensure that there would be no adverse impacts on amenities in terms of overlooking, dominance or disturbance. In conclusion, appropriate levels of amenity are achievable within the development itself, subject to the above condition, in accordance with CP57.

7.4 Ecology

The NPPF para 118 states: *When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:*

- *if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;*
- *development proposals where the primary objective is to conserve or enhance biodiversity should be permitted;*
- *opportunities to incorporate biodiversity in and around developments should be encouraged*

The NPPG also sets out guidance. **Core Policy 50** seeks to ensure that all development proposals incorporate appropriate measures to avoid and reduce disturbance of sensitive wildlife species and habitats throughout the lifetime of the development.

Ecology have commented:

The site falls within two Bat SAC consultation zones, and may have some potential as a night feeding perch for the relevant bat species. Therefore, I consider, on balance, that a scoping bat survey of the building proposed for demolition is required.

As the proposal is for an annexe, the potential impact of the development falling within the catchment of the River Avon SAC does not become a consideration.

The photos of the building show that the building has limited potential for a significant bat roost because it appears to have poor thermal insulation properties. It has a single skinned metal roof. Conditions are light in places due to the building's open front and back. It appears the walls are not double skinned although officers cannot be entirely sure of this. However, given the building's age and position between two bat SAC consultation zones, it remains possible that the barn is used by bats roosting singly on a casual basis or by small numbers during the winter for hibernation or as a night feeding perch for Annex II bats. Therefore, given the condition of the building and the risk of finding a significant roost is small, a planning condition is recommended to ensure that any demolition work is overseen by a licensed bat ecologist:

In conclusion, the development is considered to pose a low threat to protected species and no objection is raised to the development, in accordance with Core Policy 50, the NNPF, guidance in the NPPG and the ODPM circular 06/2005, subject to the above condition.

7.5 Highway Safety

CP60 and CP61 are relevant to the proposal. The highways officer has stated:

The site is located outside of any development boundary and therefore attracts an adverse highway comment on sustainable transport grounds, however as this is proposing an annexe, I will be guided by you as to whether you consider the proposal to be contrary to the Wiltshire Core Strategy, Core Policy 60 and 61 and Section 9, paras 102, 103, 108 & 110 of the National Planning Policy Framework 2019 which seeks to reduce the need to travel particularly by private car, and support and encourage sustainable, safe and efficient movement of people and goods.

Vehicle access to the site is along Bunny Lane, a single track, no through road and I would

consider that any traffic movements associated with this development would not have an adverse impact on the surrounding highway network. Should you are minded to support the development, I wish to raise no highway objection to the proposal.

7.7 Conclusion

The proposal seeks to provide a replacement building on the footprint of the existing black barn within the curtilage of Rowdens Farm house and subject to a restrictive condition to tie the annexe to the main agricultural worker's dwelling, the development is considered to be acceptable in policy principle. The issue of whether or not the accommodation comprises an annexe or a new dwelling in the countryside has been considered against experience from recent appeal decisions and the case law from Uttlesford DC V Secretary of State 1991. Officers are satisfied that the accommodation meets the necessary requirements to be considered as ancillary accommodation.

There are no objections to the development on parking and access grounds, and subject to suitable conditions, the development is unlikely to cause harm to protected species or the future amenities of the occupiers. Therefore, the development is recommended for approval.

RECOMMENDATION: APPROVE subject to the following conditions:

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

The development hereby permitted shall be carried out in accordance with the following approved plans listed in schedule:

Proposed Elevations Dwg No C dated 20/5/19

Proposed Ground Floor with footprint of Existing Barn Dwg No AA dated 20/5/19

Proposed First Floor Plan Dwg No B dated 20/5/19

Barn conversion to Dwelling Plan 2 dated 6/11/18

Site Location Plan (red line) at 1:1250 scale

Planning Statement from M. Head received 5/7/19

REASON: For the avoidance of doubt and in the interests of proper planning.

The materials to be used in the construction of the external surfaces of the development hereby permitted shall be in accordance with the details submitted, namely red brick (to match Rowden's Farm house) and timber cladding for the walls and slate for the roof.

REASON: In the interests of visual amenity and the character and appearance of the area.

The annexed accommodation hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the main agricultural worker's dwelling, known as Rowdens Farm house and it shall remain within the same planning unit as the main dwelling. The annexe shall not be sold or let separately from the main dwelling.

REASON: The additional accommodation is sited in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit a wholly separate dwelling. The main dwelling, known as Rowden's Farm house is subject to a restrictive condition under 73/EY/478 which restricts the occupiers to a person solely, or mainly employed or last employed in the locality in agriculture (as defined) or in forestry (including any dependents of such a person residing with him) or a widow or widower of such a person). The occupation of the annexe, being ancillary to the main dwelling, would be available only to such dependents/persons.

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additional insertion of any doors or entrances in the west elevation of the annexe hereby approved.

REASON: To ensure that the annexe retains its entrance within the curtilage of the main house.

The annexe hereby permitted shall not be occupied until the proposed sewage and surface water disposal drainage works set out on the statement from M. Head received 5/7/19 and Plan 2 have been completed in accordance with the details hereby approved.

REASON: To ensure that the development is provided with a satisfactory means of drainage before occupation.

If, during development, any evidence of historic contamination or likely contamination is found, the developer shall cease work immediately and contact the Local Planning Authority to identify what additional site investigation may be necessary. The development shall be implemented in accordance with any scheme of remediation works to be subsequently agreed in writing.

Reason: In the interests of future amenities of the occupiers.

The demolition works hereby approved shall be overseen by a licenced bat ecologist who will be present on site on the day the demolition works commence to undertake a detailed inspection of the internal and external parts of the building to identify any areas that hold potential for bats (a bat scoping survey). The works will only proceed in accordance with any subsequent written advice issued by the ecologist.

REASON: To ensure harm to bats is avoided in accordance with the Habitats Regulations 2010

Informative

The applicant is advised that all British bat species are protected under The Conservation of Habitats and Species Regulations 2010 (as amended), which implements the EC Directive 92/43/EEC in the United Kingdom, and the Wildlife and Countryside Act 1981 (as amended). Please note that this consent does not override the statutory protection afforded to any such species. If bats are discovered, all works should stop immediately and Natural England should be contacted for advice on any special precautions before continuing (including the need for a derogation licence)



The Planning Inspectorate

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Wiltshire Council
Planning Appeals
Monkton Park Office
Chippenham
Wiltshire
SN5 1ER

Your Ref:
Our Ref: APP/Y3940/W/17/3167856

03 November 2017

Dear Sir/Madam,

Town and Country Planning Act 1990
Appeal by Mr & Mrs M Avelilno
Site Address: Woodpeckers, Whiteparish, SP5 2QG

I enclose a copy of our Inspector's decision on the above appeal(s).

If you have queries or feedback about the decision or the way we handled the appeal(s), you should submit them using our "Feedback" webpage at <https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure>.

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Yours faithfully,

Sean Ernsting

Sean Ernsting

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Appeal Decision

Site visit made on 12 September 2017

by Mrs J Wilson BA BTP MRTPI DMS

Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3rd November 2017

Appeal Ref: APP/Y3940/W/17/3167856

Woodpeckers, Brickworth Road, Whiteparish SP5 2QG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Mike Avelilno against the decision of Wiltshire Council.
 - The application Ref 16/11152/FUL, dated 16 November 2016, was refused by notice dated 6 January 2017.
 - The development proposed is the conversion of a stable block into a dwelling for family use only and the conversion of a garage block to function/playrooms.
-

Decision

1. The appeal is dismissed insofar as it relates to the conversion of a stable block into a dwelling for family use. The appeal is allowed insofar as it relates to the garage block and planning permission is granted for the conversion of a garage block to function/playrooms at Woodpeckers, Brickworth Road, Whiteparish SP5 2QG in accordance with the terms of the application, Ref 16/11152/FUL, dated 16 November 2016, and the plans submitted with it, so far as relevant to that part of the development hereby permitted and subject to the conditions set out in the attached schedule.

Procedural matters

2. The Council have confirmed that the use of the garage as a function/playroom is acceptable to them on the basis that the accommodation is used for private and domestic purposes associated only with the main dwelling and not for any business purposes. They confirm that this would not conflict with the conditions attached to the permission by which the building was initially granted. From the evidence before me there is no reason to reach a different conclusion. On this basis and subject to the imposition of conditions recommended by the Council this part of the appeal succeeds as set out above.
3. The submitted plans show the existing use of the garage block as garaging/car port with a playroom and studio above. However the proposed ground floor plan is annotated to indicate that the space is in temporary use as accommodation for the appellants' son and family. I saw that to be the case on my visit, though this use does not form part of this appeal.

Main Issues

4. The main issues in respect of the proposed conversion of the stable block to a dwelling for family use are:
 - whether the development would comprise accommodation for dependant persons or an independent dwelling. If the latter, whether the location is appropriate for a new dwelling in the context of local and national planning policy;
 - the suitability of the access to serve the proposed development having regard to accessibility and highway safety.

Reasons

Policy

5. The appellants wish to provide living accommodation for their son and his family by converting a former stable building currently used for storage and as a gym. Accommodation would comprise four double bedrooms, with three bathrooms, two living rooms, kitchen, dining room, study, gym and garage. For the most part existing openings would be utilised though a small number of additional openings are proposed. Externally there would be little change to the appearance of the building.
6. The accommodation would be substantial and even though intended for occupation by family members would be capable of operating entirely independently of the existing dwelling. The Council contend that the provision does not appear to relate to a dependant person so is outside the scope of the relevant development plan policy for such accommodation.
7. The appellants state their son and his family are financially dependent upon them and the accommodation is required for a temporary period, although no indication of a timescale is given. Furthermore a draft legal agreement was submitted to the Council to ensure that the annexe would remain: ancillary to the main house; occupied by dependents of the appellants; and not let or sold separately.
8. Accommodation for a dependant person or persons is normally associated with shared facilities of some kind. In this case access to the site would be shared and there would be no separate garden to serve the proposed dwelling. Nonetheless, the substantial size of the proposed accommodation would be not far short of that in the main dwelling. It would provide for completely separate and independent living some distance from the main house, and on this basis it would effectively be a separate planning unit.
9. In these circumstances it would be inappropriate to restrict the occupancy of a conversion of this size by a condition or a legal agreement as this would not meet required tests of precision, reasonableness or enforceability. The Council have highlighted in their evidence a similar situation where an appeal¹ for the removal of a planning obligation was allowed because the accommodation was capable of functioning as a separate unit, as is the case here.
10. Equally it would not be appropriate to consider the accommodation for a temporary period particularly given the level of investment needed to achieve a

¹ APP/Y3940/Q/16/3160184

conversion of this scale. In effect a new dwelling would be created in the open countryside where restrictive policies apply to residential development.

11. Paragraph 55 of the National Planning Policy Framework (the Framework) advocates that local planning authorities should avoid isolated new homes in the countryside unless certain special circumstances are met; none of which apply here. Saved Policy H31 of the Salisbury District Local Plan (2003) (Local Plan) permits extensions to existing dwellings in the countryside where, amongst other things, it would not create, or be capable of creating, a separate dwelling. Saved Policy H33 sets out criteria for proposals to create separate units of accommodation for dependent persons. From the evidence before me, the dependence referred to is solely a financial one, and though I understand the appellants' desire to make independent provision for their son and his family this is a personal circumstance which will change over time, whereas the accommodation would be permanent. As such, it does not outweigh the policy objections identified.
12. Taking the above into account, I conclude that the proposal would represent a new dwelling in the open countryside for which insufficient justification has been demonstrated. It is therefore in conflict with Policies H31 and H33 of the Local Plan; Core Policies 1, 2, 48 and 57 of the Wiltshire Core Strategy (2015) and the aims of the Framework. Amongst other things these policies seek to control development in the open countryside where there is no special justification.

Accessibility and highway safety

13. The appeal site is outside the village of Whiteparish which is about a mile to the east. Whilst it is located on the A27 close to the junction of the main A36, and there is a bus stop nearby, the closest centres which provide a reasonable range of services and facilities are Salisbury and Romsey, both around 13km from the site. This limits accessibility and means that occupants of the proposed accommodation would be largely reliant on the private car to reach these settlements. I consider it unlikely that car-sharing by the occupiers of the two properties would be a frequent practice.
14. The vehicular access to the site has restricted visibility and improvements could not be secured within land owned by the appellants. The increased traffic which would be likely to result from a four bedroomed family dwelling of this size would increase the use of this substandard access. The appellants submit that there would be no increase in people living on the site as their son and family already live there. However, for the reasons set out above the proposal would result in the creation of a unit capable of independent occupation. I have to consider the current and future users of this site and find that the additional unit of accommodation served from the existing substandard access would increase the risks associated with its use which would be prejudicial to highway safety.
15. The proposal would conflict with the principles of sustainable development and be prejudicial to highway safety as it would result in new housing in the countryside in an inaccessible location which would be reliant on a substandard access. It would thus be in conflict with Policies 60 and 61 of the Core Strategy and the aims of the Framework which seek to reduce dependency on the private car, focus new development in sustainable locations and ensure safe access to the highway network.

Conditions

16. In addition to the statutory time limit condition, the Council have suggested two additional conditions in respect of the garage conversion. I shall impose a condition specifying the relevant drawings as this provides certainty. I shall also restrict the garage to ancillary domestic use and preclude commercial use given the free standing nature and size of the building.

Conclusion

17. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed only in part but otherwise dismissed.

Janet Wilson

INSPECTOR

Schedule of Conditions

Conversion of the garage block to function/play rooms.

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with Drg. No. Wood002/Rev A (Change of use Garage to Function Room).
- 3) The function/playrooms hereby permitted shall only be used for private ancillary purposes to Woodpeckers and shall at no time be used for any commercial purpose whatsoever.

[End of Schedule]

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The Planning Inspectorate

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Your Ref:

Our Ref: APP/Y3940/W/15/3003246

Wiltshire Council
Development Services
The Council House
Bourne Hill
Salisbury
SP1 3UZ

29 July 2015

Dear Sir/Madam,

Town and Country Planning Act 1990
Appeal by Mr Peter Anthony Robinson
Site Address: Mortons, Hankerton, MALMESBURY, Wiltshire, SN16 9JZ

I enclose a copy of our Inspector's decision on the above appeal(s).

If you have queries or feedback about the decision or the way we handled the appeal(s), you should submit them using our "Feedback" webpage at <http://www.planningportal.gov.uk/planning/planninginspectorate/customerfeedback/feedback>.

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The Planning Inspectorate cannot change or revoke the outcome in the attached decision. If you want to alter the outcome you should consider obtaining legal advice as only the High Court can quash this decision.

Yours faithfully,

Erin Lindell
Erin Lindell

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Appeal Decision

Site visit made on 2 July 2015

by A Harwood CMS MSC MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 July 2015

Appeal Ref: APP/Y3940/W/15/3003246

Mortons, Hankerton, Malmesbury, Wiltshire, SN16 9JZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Peter Anthony Robinson against the decision of Wiltshire Council.
 - The application Ref 14/08416/FUL, dated 5 September 2014, was refused by notice dated 29 October 2015.
 - The development proposed is existing garden buildings to be removed and replaced with ancillary accommodation.
-

Preliminary Matter

1. The Council's decision was made prior to the adoption on 20 January 2015 of the Wiltshire Core Strategy (CS) which supersedes some policies within the North Wiltshire Local Plan 2011 (LP) adopted June 2009 other than those that have been saved. LP policy H4 as referred to within the decision notice was saved and remains relevant. This policy change has not altered the Council's position that planning permission should not be given for the proposed development.

Decision

2. The appeal is allowed and planning permission is granted for existing garden buildings to be removed and replaced with ancillary accommodation at Mortons, Hankerton, Malmesbury, Wiltshire, SN16 9JZ in accordance with the terms of the application, Ref 14/08416/FUL, dated 5 September 2014, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 'Mortons'.
 - 3) No development shall commence on site until details and samples of the materials to be used for the external walls, windows, doors and roof have been submitted to and approved in writing by the Local Planning Authority.
-

The development shall be carried out in accordance with the approved details.

- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: '01'; '02'; and '03'.

Main Issues

3. There is no dispute between the appellant and the Council that the site is within the countryside rather than within a settlement. There are therefore two main issues. The first is whether the proposed building would be in an appropriate location given policies aimed at protecting the countryside from isolated dwellings. The second main issue is the effect of the proposed building on the character and appearance of the site and surrounding rural area, with particular reference to design and materials.

Reasons

4. The appeal site currently includes a detached cottage positioned close to the western and southern boundaries of its large garden. The garden is set behind a robust hedge and there is a wooden gate across the entrance to the gravelled driveway. Alongside the driveway, the hedge continues around to partly enclose the garden. On the eastern side, the garden includes three existing timber outbuildings that would be replaced by the proposal as well as some trees. The driveway also leads to the large stone garage and parking area in front of the principle elevation of the dwelling which faces towards the eastern side of the garden. The position of the dwelling within the site means that the main open parts of the garden are to the north and also along the southern boundary, leading around the side of the garage. This links with the eastern part of the site where the proposed building would be located. The position of the proposed building in my opinion is integrally part of the existing garden. I do not agree with the appellant that it should be considered as previously developed land as defined within the National Planning Policy Framework (NPPF) as it is within a private residential garden.
5. The proposed building would be two storeys in height and would include two bedrooms, a kitchen, living room, a ground floor toilet and a first floor shower room and toilet. It would have all of the facilities to enable independent day to day living however it has been very clear through the processing of the planning application and this appeal that it would be intended for ancillary purposes. The Council considers that there is insufficient physical connection between the dwelling and the site. If the proposal were for a separate dwelling, this location within the countryside would be unacceptable as it would not comply with the exceptions allowing such development as set out in LP policy H4, CS policy 48 or paragraph 55 of the NPPF.
6. I have not had any particular policy drawn to my attention that indicates that annexes have to be physically linked to the primary accommodation. I am content that the proposed position relates well to the domestic garden and overall use of the site for a single household. A planning condition as suggested by the appellant would ensure use remains ancillary to the main house and not an independent dwelling. If that condition were subsequently breached, the Council could consider taking enforcement action to secure compliance.

7. In terms of the need for such a large annex, I can understand why the Council may be sceptical. However, the existing dwelling whilst including 4 first floor bedrooms and a bedroom on the ground floor has a layout which does not allow much privacy. The appellant's wife has a form of dementia and both of them are in their 70's. They have 4 adult children one of whom has two children and I can understand that there is likely to be the ongoing need for regular visits. At the same time, there may also be a need for quiet relaxation during visits. Having a degree of separation would allow for a much more comfortable experience for the whole family during such visits. These personal circumstances are not, in my experience, unusual.
8. In relation to the first main issue, the site would be an appropriate location for the proposed annex building and would not therefore breach policies aimed at protecting the countryside from isolated dwellings including LP policy H4, CS policy 48 or paragraph 55 of the NPPF.
9. The appellant's dwelling is an attractive traditional building constructed of natural stone. This is similar to many of the other dwellings within the more built up part of Hankerton as well as those dwellings like the appeal site which are loosely scattered in the rural surroundings of the village. The large detached garage is also constructed of stone but the three outbuildings proposed for replacement are timber boarded. I also saw other examples of large timber outbuildings including the one that was pointed out to me at my site visit on a site further to the east. There is another at Dove House on the northern side of the road leading into Hankerton.
10. The building would be well screened by the surrounding hedges. Large timber outbuildings are not unusual even in more prominent positions than this. Being constructed of timber would mean that the building would not compete visually with the main dwelling for dominance within the site and the space between the buildings would also prevent any substantial impacts upon the character of the attractive traditional cottage. Although taller than the existing timber buildings it is proposed to replace, there would only be a minor increased visual impact even where seen from the road through the gap proposed through the hedge to allow for visitor parking. The establishment of a new area for parking and position of the proposed annex behind the remaining hedge has led to the Council having concerns about the establishment of a separate parcel. The use by a separate household as a new dwelling could lead to an intensification of activity that would inevitably become apparent in terms of the character and appearance of the site. However, such impacts would not occur to a material extent if the use is limited to ancillary purposes.
11. In relation to the second main issue, the proposed building would not have a harmful effect upon the character and appearance of the site or rural area. This would comply with CS policy 57.

Other Matters

12. As the use of the building would be limited to ancillary purposes, there would be little impact due to the position away from services. The visitors staying in the annex are likely to be people who may stay anyway but who could do so in a more comfortable manner. I have attached a condition as suggested by the appellant which limits the use of the building as an annex. I have based this on

the wording from Appendix A to the former circular 11/95 "The Use of Conditions in Planning Permissions" which has not as yet been superseded by the Planning Practice Guidance (PPG).

13. I have considered the suggested conditions in light of the advice in the NPPF and the PPG. This states that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. The Council has not explained why there would be such circumstances. I do agree that it is necessary to secure further agreement of the proposed materials as the information with the application is in a basic form. I have also included a requirement within that condition for further window and door details.

Overall Conclusion

14. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

A Harwood

INSPECTOR



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Planning Officer
Wiltshire Council
Development Services
County Hall, Bythsea Road
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Wiltshire
BA14 8JN

Your Ref: 16/07534/FUL
Our Ref: APP/Y3940/D/17/3166866

27 April 2017

Dear Sir/Madam,

Town and Country Planning Act 1990
Appeal by Mrs S Osburn
Site Address: Blakeney's, West Knoyle, WARMINSTER, BA12 6AG

I enclose a copy of our Inspector's decision on the above appeal(s).

If you have queries or feedback about the decision or the way we handled the appeal(s), you should submit them using our "Feedback" webpage at <https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure>.

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Thank you in advance for taking the time to provide us with valuable feedback.

Yours sincerely,

Philip James

Philip James

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Appeal Decision

Site visit made on 4 April 2017

by **JP Roberts BSc(Hons), LLB(Hons), MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 April 2017

Appeal Ref: APP/Y3940/D/17/3166866

Blakeney, The Street, West Knoyle, Warminster, Wiltshire BA12 6AG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs S Osburn against the decision of Wiltshire Council.
 - The application Ref 16/07534/FUL, dated 2 August 2016, was refused by notice dated 19 October 2016.
 - The development proposed is the construction of a pitched roof and insertion of new doors and windows to an existing outbuilding in connection with the proposed use as an annex.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - i) whether the proposal would result in the creation of a separate single dwelling house, and
 - ii) the effect of the proposal on the character and appearance of the area, which lies within the Cranborne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty (AONB).

Reasons

Whether the proposal would create a separate dwelling

3. The proposed dwelling would provide all of the facilities necessary to enable occupiers to live wholly independently of the house at Blakeney. However, this on its own is not conclusive as the judgement in *Uttlesford DC v Secretary of State for the Environment & White* [1992] makes clear – it is a matter of fact and degree. The appellant has explained in her grounds of appeal that the building is intended to be occupied by her son, who has special needs, enabling him to live as part of the family but with a degree of independence. The proposed dwelling would share the same access as the main dwelling, and there would be no separate curtilage. It would be very much smaller than the main house, and would be fairly close to it.
4. Whilst I recognise that the building could be used as a separate dwellinghouse wholly independent of Blakeney, on the basis of the evidence before me, I consider that it could be realistically occupied as an annex, and in such circumstances it would be appropriate to prevent separate occupation by

means of a condition limiting occupation for purposes ancillary to the residential use of the main dwelling.

5. Wiltshire Core Strategy (CS) Policy H33 deals with accommodation for dependent persons and provides that such proposals will be permitted in circumstances which include where the accommodation is created as a result of a conversion of an existing building within the curtilage of the main dwelling. A further criterion is that the occupation of the accommodation should be subject to a restrictive occupancy condition or, if outside a Housing Policy Boundary, Housing Restraint Area, Special Restraint Area or New Forest Housing Policy Area, is subject to the applicant entering into a legal agreement.
6. The proposal would be outside of the specific locations referred to in the policy, and thus the policy would require a legal agreement to be entered into. However, a condition would have the same effect as a legal obligation, and I see no reason as to why such control would not be effective in the same manner. Thus, the proposal would comply with the permissive approach of Policy H33, if not with the letter of the policy.
7. As an incidental dwelling, the Council's objections in respect of its general approach to new dwellings in the countryside and away from services and facilities do not apply here. I therefore conclude on the first main issue that the proposal would not result in the creation of a separate single dwelling and that it would not conflict with CS Core Policies 1 and 2, and although it does not strictly comply with CS Policy H33, it accords with the broad approach, subject to the imposition of a condition. CS Policy H31 deals with extensions to existing dwellings which is not wholly relevant to this proposal.

Character and appearance

8. The double garage is sited in a backland position to the rear of a range of outbuildings attached to Manor Cottage, which screen it from the road to the front of Blakeney's. However, it can be seen, albeit at a distance of some 125m or so, from the road adjacent the Church of St Mary the Virgin, and even more clearly from the higher ground within the churchyard and adjacent the southern door to the church.
9. The existing building is unusually tall for a garage as a result of the need to accommodate a large motorhome, and is somewhat akin to an industrial or agricultural building, at odds with the lower heights of the ancillary buildings elsewhere within the curtilages of Blakeney's and Manor Cottage. The proposal would increase its height even further, by an additional 1.6m, which would exacerbate the unusual and uncharacteristic appearance of the building.
10. The use of a zinc roof, whilst not on its own unacceptable in a rural location, would, together with an extensive area of glazing on the front elevation, make the building even more conspicuous by day, and at night the lighting would emphasise the residential use in a backland location which hitherto has been characterised by much lower key ancillary buildings, which are either unlit or would be lit only occasionally and in a more restrained manner than would be the case with large areas of glazing to the main living accommodation.
11. To my mind, the enlargement of the building in the manner proposed would add to the incongruity of the existing garage, and would appear as overly large and prominent. Its materials would exacerbate its noticeability. I consider

that this would be harmful to the restrained, mainly vernacular, architecture of the houses in the vicinity of the site, and would not provide the sensitive design to mitigate harmful landscape impacts that is sought by CS Core Policy 51. I consider that this would harm the character and appearance of the surrounding area, and have a small harmful effect on the natural beauty of the AONB. It would conflict with CS Core Policies 51 and 57, the latter dealing with high quality design.

Other matters

12. I have had particular regard to the benefit of providing the proposed accommodation for the appellant's son. However, I have not been provided with any information as to why such a large building, with two bedrooms, would be required, or whether the existing very large dwelling could be adapted to provide the level of independence which is sought. The harm that I have found is not outweighed by the personal circumstances of this case.
13. St Mary the Virgin Church is a Grade II* listed building, the grounds of which abut the garden area of Blakeney's. Whilst I accept that the appeal building lies within the setting of the church, the existence of a strong residential presence in the form of Blakeney's and its attached neighbour, means that the proposal would leave the setting unaffected.
14. I have also considered a neighbour's concerns about a bathroom window, but this does not add to my reason for dismissing the appeal.

Conclusion

15. The harm that I have found is sufficiently serious to amount to a conflict with the development plan as a whole, and for the reasons given above I conclude that the appeal should be dismissed.

JP Roberts

INSPECTOR

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Rowdens Farm
Bunny Lane
Sherfield English
Romsey
Hants
SO516FT

2 September 2019

Dear Becky

Following our discussion, I am writing this letter to highlight the main reasons for going forward with the Black Barn development.

My Wife's parents are both in their seventies and are currently living in rented accommodation. They have recently had a rent review and it was discovered that due to the fact that they have been renting a property from the estate for more than forty years, the rent they pay was very undervalued. The future payments will therefore have to increase considerably.

It was then discussed that perhaps we could potentially develop the black barn near to our house, as an annex for them to live in, funded by them. This would free them of having to pay increasing monthly rent, and also bring them closer to my wife, to allow her to care for them in their latter years. They will also be close at hand to give some help on the farm, or childcare for our children. Within the barn it has been proposed to have two bedrooms so they can have space for visitors of family or friends or space for a carer if the need should arise in future years.

I understand that to allow the development there may be restrictions placed upon the annex, which I can accept as it is intended for family use. I would like to point out that when Rowdens Farm house was built in the 1970s, it replaced two dwellings used for farm workers, and an agricultural restriction was placed on it. One dwelling has therefore been lost from Rowdens farm.

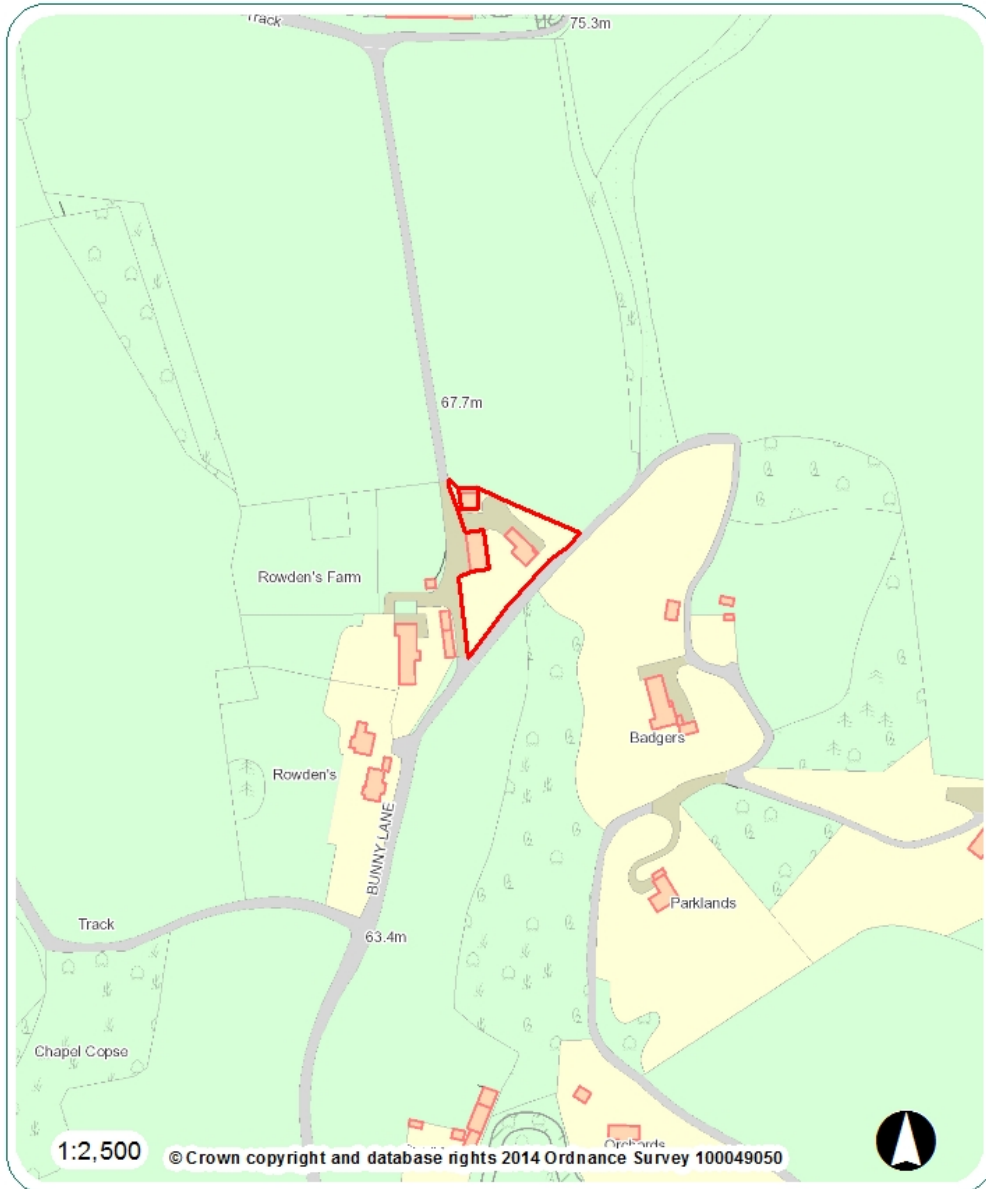
I hope this information can help with the justification of allowing the development of the barn, please do not hesitate to contact me if anything further is required.

Yours sincerely,

Matthew Head

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